

No. 8144

United States

*Vol 1986
see Vol 1983*

Circuit Court of Appeals

For the Ninth Circuit. /

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

CECIL B. deMILLE PRODUCTIONS, INC.,
Respondent.

Transcript of the Record

In Three Volumes

VOLUME I

Pages 1 to 462

Upon Petition to Review an Order of the United States
Board of Tax Appeals.

FILED

JUL 11 1936



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES:

For Petitioner:

THOMAS R. DEMPSEY, Esq.,
A. CALDER MACKAY, Esq.

For Respondent:

M. B. LEMING, Esq.,
J. H. MILLER, Esq.,
R. J. BOPP, Esq.,
WALTER W. KERR, Esq.

Docket No. 52996.

CECIL B. deMILLE PRODUCTIONS, INC.,
a corporation,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES.

Transferred to Mr. Goodrich 12/10/34.

1931

Feb. 19—Petition received and filed. Taxpayer notified. (Fee paid).

Feb. 19—Copy of petition served on General Counsel.

Mar. 25—Answer filed by General Counsel.

Mar. 28—Copy of answer served on taxpayer—Circuit Calendar.

1933

- Aug. 3—Hearing set for week of Sept. 25, 1933, Long Beach, California.
- Oct. 2—Hearing had before Mr. Van Fossan on motion of petitioner to continue to Washington Calendar for hearing in December, 1933—granted.
- Oct. 2—Order placing proceeding on General Calendar for hearing in Washington during the month of December, 1933, entered.
- Oct. 16—Hearing set Dec. 13, 1933.
- Oct. 16—Transcript of hearing of Oct. 2, 1933 filed.
- Dec. 13-16, inc.—Hearing had before Mr. Goodrich, Division 11. Consolidated with 52995, 61290-91, 65122-23, 71951-52. Stipulation of facts to be filed Dec. 20, 1933. Amended petition filed—copy served. Petitioner's brief due 3/15/34—reply May 15, 1934—Commissioner's reply 4/15/34.
- Dec. 20—Stipulation of facts filed.
- Dec. 28—Transcript of hearing Dec. 13, 14, 15, 16, 1933 filed.

1934

- Mar. 15—Brief filed by taxpayer—receipt acknowledged by General Counsel.
- Apr. 13—Brief filed by General Counsel.
- Apr. 23—Stipulation of facts filed.
- May 14—Order enlarging time to May 25, 1934 for petitioner to file reply brief, entered.
- May 25—Reply brief filed by taxpayer.

1935

- Jan. 31—Findings of fact and opinion rendered—
Mr. Goodrich, Division 11. Judgment will
be entered under Rule 50.
- Mar. 11—Motion for decision under Rule 50 filed
by taxpayer. 3/13/35 copy served.
- Mar. 12—Hearing set April 3, 1935 on settlement.
3/13/35 copy served. [1*]
- Mar. 19—Notice of settlement filed by General
Counsel. 3/20/35 copy served.
- Apr. 1—Order of continuance to April 10, 1935 for
hearing under Rule 50, entered.
- Apr. 10—Hearing had before Mr. Black (Good-
rich) on settlement, Rule 50—referred to
Mr. Leech.
- Apr. 16—Decision entered—Mr. Leech, Division 6.
- July 1—Petition for review by U. S. Circuit Court
of Appeals, 9th Circuit, with assignments
of error filed by General Counsel.
- July 15—Proof of service filed by General Counsel.
- Aug. 21—Motion for extension to Nov. 27, 1935 to
settle evidence and transmit record filed
by General Counsel.
- Aug. 21—Order enlarging time to Nov. 27, 1935 for
preparation of evidence and delivery of
record entered.
- Nov. 22—Motion for extension to Feb. 26, 1936 to
settle and transmit record filed by General
Counsel.

*Page numbering appearing at the foot of page of original certified
Transcript of Record.

1935

Nov. 22—Order enlarging time to Feb. 26, 1935 for preparation of evidence and delivery of record, entered.

1936

Jan. 15—Statement of evidence, lodged.

Jan. 24—Notice of hearing on Feb. 12, 1936 to approve statement filed by General Counsel.

Jan. 24—Praecipe with proof of service thereon filed by General Counsel.

Feb. 3—Motion for extension to Feb. 25, 1936 to file objections, amendments, or counter statement filed by taxpayer. 2/4/36 granted and hearing continued to 2/26/36.

Feb. 21—Agreed statement of evidence approved and ordered filed.

Feb. 26—Order enlarging time to 3/27/36 to transmit and deliver record entered. [2]

APPEARANCES:

For Petitioner:

THOMAS R. DEMPSEY, Esq.,

A. C. MACKAY, Esq.

For Respondent:

M. B. LEMING, Esq.,

R. J. BOPP, Esq.,

J. H. MILLER, Esq.,

W. W. KERR, Esq.

Docket No. 61920

CECIL B. deMILLE PRODUCTIONS, INC.,
a Corporation,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES.

Transferred to Mr. Goodrich 12/10/34.

1932

- Jan. 12—Petition received and filed. Taxpayer notified. (Fee paid).
Jan. 12—Copy of petition served on General Counsel.
Feb. 24—Answer filed by General Counsel.
Mar. 8—Copy of answer served on taxpayer—assigned to Circuit Calendar.

1933

- Aug. 3—Hearing set 9/25/33, Long Beach, California.
Oct. 2—Hearing had before E. H. Van Fossan on petitioner's motion to continue to Washington, D. C., in December, 1933—granted.
Oct. 2—Order placing on General Calendar for hearing in Dec., 1933, entered.
Oct. 16—Transcript of hearing of Oct. 2, 1933 filed.
Oct. 16—Hearing set Dec. 13, 1933.

1933

Dec. 13, 14, 15, 16—Hearing had before E. J. Goodrich, Division 11—submitted. Consolidated for hearing and report with 52995, 65122, 71951, 52996, 61291, 65123, 71952. Stipulation of facts to be filed by 12/20/33. Amended petition filed—copy served. Petitioner's brief due March 15, 1933—reply May 15—respondent's reply due April 15, 1934.

Dec. 20—Stipulation of facts filed.

Dec. 28—Transcripts (2) of hearing of Dec. 13, 14, 15, 16, 1933 filed.

1934

Mar. 15—Brief filed by taxpayer—receipt of copy acknowledged by General Counsel.

Apr. 13—Brief filed by General Counsel.

Apr. 23—Stipulation of facts filed.

May 14—Order that time for petitioner's reply brief be extended to May 25, 1934, entered.

May 25—Reply brief filed by taxpayer.

1935

Jan. 31—Findings of fact and opinion rendered—E. J. Goodrich, Division 11. Judgment will be entered under Rule 50.

Mar. 11—Motion for decision under Rule 50 filed by taxpayer.

Mar. 12—Hearing set April 3, 1935 under Rule 50.

Mar. 13—Copy of motion and hearing notice served.

[3]

Mar. 19—Notice of settlement filed by General Counsel. 3/20/35 served.

1935

- Apr. 1—Order continuing proceeding to Day Calendar of April 10, 1935, entered.
- Apr. 10—Hearing had before Mr. Black (Goodrich) on settlement under Rule 50—referred to Mr. Leech for decision.
- Apr. 15—Decision entered—J. R. Leech, Division 6.
- July 1—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, with assignments of error filed by General Counsel.
- July 15—Proof of service filed by General Counsel.
- Aug. 21—Motion for extension to Nov. 27, 1935 to settle evidence and transmit record filed by General Counsel.
- Aug. 21—Order enlarging time to Nov. 27, 1935 to prepare evidence and deliver record entered.
- Nov. 22—Motion for extension to Feb. 26, 1936 to settle and transmit record filed by General Counsel.
- Nov. 22—Order enlarging time to 2/26/36 to prepare evidence and transmit record entered.

1936

- Jan. 15—Statement of evidence lodged.
- Jan. 24—Notice of hearing on Feb. 12, 1936 to approve statement filed by General Counsel.
- Jan. 24—Praecipe with proof of service thereon filed by General Counsel.
- Feb. 3—Motion for extension to Feb. 25, 1936 to file objections, amendments, or counter statement filed by taxpayer. 2/4/36 granted and hearing continued to Feb. 26, 1936.

1936

Feb. 21—Agreed statement of evidence approved and ordered filed.

Feb. 26—Order that time for transmission and delivery of record be extended to March 27, 1936, entered. [4]

APPEARANCES.

For Petitioner:

THOMAS R. DEMPSEY, Esq.,
A. CALDER MACKAY, Esq.

For Respondent:

M. B. LEMING, Esq.,
J. H. MILLER, Esq.,
R. J. BOPP, Esq.,
WALTER W. KERR, Esq.

Docket No. 65123.

CECIL B. deMILLE PRODUCTIONS, INC.,
a Corporation,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES.

Transferred to Mr. Goodrich 12/10/34.

1932

Apr. 27—Petition received and filed. Taxpayer notified. (Fee paid)

1932

Apr. 27—Copy of petition served on General Counsel.

June 10—Answer filed by General Counsel.

July 26—Copy of answer served on taxpayer—Circuit Calendar.

1933

Aug. 3—Hearing set 9/25/33 at Long Beach, California.

Oct. 2—Hearing had before Mr. Van Fossan, Division 9—petitioner moves to continue to Washington for hearing in Dec., 1933—motion granted.

Oct. 2—Order of continuance to Dec., 1933 at Washington, D. C., entered.

Oct. 16—Transcript of hearing Oct. 2, 1933 filed.

Oct. 16—Hearing set Dec. 13, 1933.

Dec. 13, 14, 15, 16—Hearing had before Mr. Goodrich, Division 11. Consolidated with 52995-96, 61290-91, 65122 and 71951-52. Stipulation of facts to be filed by Dec. 20, 1933. Amended petition filed—copy served. Petitioner's brief due 3/15/34—reply 5/15/34—Commissioner's reply April 15, 1934.

Dec. 20—Stipulation of facts filed.

Dec. 28—Transcript of hearing of Dec. 13, 14, 15 and 16, 1933 filed.

1934

Mar. 15—Brief filed by taxpayer. Receipt of copy acknowledged by General Counsel.

Apr. 13—Brief filed by General Counsel.

1934

Apr. 23—Stipulation of facts filed.

May 14—Order enlarging time to May 25, 1934 for petitioner to file reply brief, entered.

May 25—Reply brief filed by taxpayer.

1935

Jan. 31—Findings of fact and opinion rendered—Mr. Goodrich, Division 11. Judgment will be entered under Rule 50.

Mar. 11—Motion for decision under Rule 50 filed by taxpayer.

Mar. 12—Hearing set April 3, 1935 on settlement.

[5]

Mar. 19—Notice of settlement filed by General Counsel. 3/20/35 copy served.

Apr. 1—Order to place on Calendar of April 10, 1935, under Rule 50, entered.

Apr. 10—Hearing had before Mr. Black (Goodrich) on settlement, Rule 50—referred to Mr. Leech.

Apr. 16—Decision entered—Mr. Leech, Division 6.

July 1—Petition for review by U. S. Circuit Court of Appeals (9) with assignments of error filed by General Counsel.

July 15—Proof of service filed by General Counsel.

Aug. 21—Motion for extension to 11/27/35 to complete and transmit record filed by General Counsel.

Aug. 21—Order enlarging time to Nov. 27, 1935 for preparation of evidence and delivery of record entered.

1935

- Nov. 22—Motion for extension to Feb. 26, 1936 to settle and transmit record filed by General Counsel.
- Nov. 22—Order enlarging time to Feb. 26, 1936 for preparation of evidence and delivery of record entered.

1936

- Jan. 15—Statement of evidence lodged.
- Jan. 24—Notice of lodgment of statement of evidence, with hearing set 2/12/26, filed.
- Jan. 24—Praecipe filed—proof of service thereon.
- Feb. 3—Motion for extension to Feb. 25, 1936 to file objections, amendments, or counter statement filed by taxpayer. 2/4/36 granted and continued to 2/26/36.
- Feb. 21—Agreed statement of evidence approved and ordered filed.
- Feb. 26—Order enlarging time to 3/27/36 for transmission and delivery of record entered.

[6]

United States Board of Tax Appeals.

Docket No. 52996.

CECIL B. deMILLE PRODUCTIONS, INC.,
a Corporation,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION.

The above named Petitioner hereby appeals from the determination of the Respondent set forth in his deficiency letter dated December 29, 1930, IT:E:Aj HR-13777-60D, and as the basis of this proceeding alleges as follows:

I.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of California, with its principal place of business at Los Angeles, California.

II.

The notice of deficiency, copy of which is attached hereto, marked "Exhibit A", was mailed to Petitioner on or about December 29, 1930.

III.

The taxes in controversy are income taxes for the years 1924, 1925 and 1926 and amount to the total sum of \$856,076.53.

IV.

The determination of the taxes set forth in the notice of deficiency is based upon the following errors:

(1) The Respondent erred in increasing Petitioner's not taxable income for the year 1924 by the sum of \$7,500.00 which the Respondent erroneously assumed was the profit derived from the sale of a three-fourths interest in certain real estate. [7]

(2) The Respondent erred in disallowing as deductions for the years 1924, 1925 and 1926, respectively, the sums of \$52,240.16, \$37,314.40 and \$21,193.85, respectively, which sums represent depreciation or amortization of Petitioner's contract.

(3) The Respondent erred in disallowing as deductions for salaries paid during the years 1924, 1925 and 1926, respectively, the sums of \$53,300.00, \$38,900.00 and \$36,400.00 respectively.

(4) The Respondent erred in disallowing as deductions for depreciation on its properties sustained during the years 1924, 1925 and 1926, respectively, the sums of \$9,924.16, \$5,975.18 and \$5,695.77, respectively.

(5) The Respondent erred in disallowing as deductions for the maintenance and upkeep of its yacht for the years 1924, 1925 and 1926, respectively, the sums of \$15,141.93, \$18,196.83 and \$33,975.85, respectively.

(6) The Respondent erred in disallowing as a deduction for the year 1924 the sum of \$15,927.50

expended by Petitioner for services rendered by its lawyer.

(7) The Respondent erred in disallowing as deductions for miscellaneous expenditures made in connection with its business during the years 1924, 1925 and 1926, respectively, the sums of \$2,552.87, \$2,750.42 and \$2,231.35, respectively.

(8) The Respondent erred in disallowing as deductions for the expenditures made by Petitioner in the upkeep and maintenance of its kitchen during the years 1925 and 1926, respectively, the sums of \$2,314.02 and \$2,712.20, respectively.

(9) The Respondent erred in disallowing as deductions for depreciation of Petitioner's properties during the years 1924, 1925 and 1926, respectively, the sums of \$4,750.00, \$4,818.69 and \$4,874.50, respectively. [8]

(10) The Respondent erred in disallowing as a deduction for each of the years 1924, 1925 and 1926 the sum of \$9,921.75 representing depreciation sustained on Petitioner's yacht.

(11) The Respondent erroneously and illegally increased Petitioner's net taxable income for the year 1925 by the sum of \$116,850.00 which the Respondent erroneously assumed represented profit on the sale of stock.

(12) The Respondent erroneously and illegally increased Petitioner's net taxable income for the year 1926 by the sum of \$50,000.00 which was reported by Petitioner in its amended income tax return for the said year and on which taxes were paid.

(13) The Respondent erroneously and illegally disallowed as a deduction for the year 1926 the sum of \$500.00 which represents a debt ascertained by Petitioner to be worthless and charged off its books within said year.

(14) The Respondent erroneously and illegally determined that Petitioner's undistributed earnings for each of the years 1924, 1925 and 1926 were retained for the purpose of preventing the imposition of the surtaxes on Petitioner's stockholders contrary to the provisions of Sections 220 of the Revenue Acts of 1924 and 1926; the Respondent failed to hold said sections unconstitutional and void.

(15) The Respondent erred in failing to abide by the various provisions of the Revenue Acts relating to the time within which assessments of deficiencies may be made.

V.

The facts upon which Petitioner relies as the basis of this proceeding are as follows:

1. Petitioner was incorporated under the laws of the State of California on or about June 10, 1922 and ever since said time has been and [9] now is a corporation with its principal place of business at Los Angeles, California.

2. Petitioner was organized for the purpose, among others, of producing and distributing motion pictures, carrying on a real estate business, ranching, farming, and buying and selling stocks and bonds for profit, and at all times since its organization Petitioner has been actively engaged and

is now engaged in those pursuits which are authorized and permitted by its Articles of Incorporation.

3. Prior to the year 1924, Petitioner entered into an agreement to purchase approximately 90 acres of land located in the City of Los Angeles for a total consideration of \$90,000.00, \$30,000.00 of which was paid at the date of execution of the contract and a note for the balance of \$60,000.00 was given. During the year 1924 Petitioner sold three-fourths of its interest in the contract to purchase the said 90 acres for which Petitioner received the sum of \$30,000.00. This transaction did not result in gain to Petitioner during the year 1924, and the action of Respondent in increasing Petitioner's net taxable income by the sum of \$7,500.00 was erroneous and illegal.

4. At the time of its organization Petitioner acquired, in exchange for 4,000 shares of its capital stock, the assets of Cecil B. deMille Productions, a copartnership; the value of the physical assets at the time they were acquired by Petitioner was at least \$269,889.82 against which there was a liability of \$17,500.00 which Petitioner assumed. In addition to the tangible assets, Petitioner acquired as part consideration for its stock certain intangible assets consisting of good will and a contract; the fair market value of the contract at the time acquired by Petitioner was not less than \$149,257.59; Petitioner sustained depreciation or amortization on said contract during the years 1924, 1925 and 1926,

respectively, in the sums of [10] \$52,240.16, \$37,314.40 and \$21,193.85, respectively.

5. During the respective years of 1924, 1925 and 1926 Petitioner paid as salaries to three of its officers and employees for services rendered by them the sums of \$53,300, \$38,900.00 and \$36,400.00, respectively. These salaries paid by Petitioner during these years were reasonable in amount in view of the benefit Petitioner derived in services rendered to it, and notwithstanding this fact, the Respondent erroneously and illegally disallowed as deductions these respective sums.

6. Petitioner expended in the maintenance and operation of its residential properties, during the years 1924, 1925 and 1926, respectively, the sums of \$9,924.16, \$5,975.18 and \$5,695.77, respectively. These sums represent ordinary and necessary expenditures within the meaning of the provisions of the applicable Revenue Acts. Notwithstanding these facts, the Respondent erroneously and illegally disallowed these respective sums as deductions.

7. During the year 1922 Petitioner acquired for use in its business a yacht for the total sum of \$66,145.03. Petitioner expended in the maintenance and operation of its yacht during the years 1924, 1925 and 1926, respectively, the sums of \$15,141.93, \$18,196.83 and \$33,975.85, respectively, all of which constitute ordinary and necessary expenses within the meaning of the provisions of the applicable Revenue Acts and which the Respondent erroneously and illegally refused to allow as deductions.

8. Petitioner, during the year 1924, expended for services rendered to it by its lawyer the sum of \$15,927.50 which constitutes an allowable deduction within the meaning of the provisions of the Revenue Act of 1924. The Respondent's action in disallowing this deduction was erroneous and illegal.

9. Petitioner, during the respective years of 1924, 1925 and 1926, [11] made miscellaneous expenditures in the conduct of its business in the total sums of \$2,552.87, \$2,750.42 and \$2,231.33, respectively, which the Respondent erroneously and illegally disallowed as deductions; these expenditures constitute ordinary and necessary expenses within the meaning of the provisions of the Revenue Acts of 1924 and 1926.

10. During the years 1924, 1925 and 1926 Petitioner was the owner of certain buildings on which it sustained depreciation during the years 1924, 1925 and 1926, respectively, in the sums of \$4,750.00, \$4,818.69 and \$4,874.50, respectively. These depreciation charges constitute allowable deductions within the meaning of the provisions of the Revenue Acts of 1924 and 1926, and the action of the Respondent in disallowing them was erroneous and illegal.

11. During each of the years 1924, 1925 and 1926 Petitioner sustained depreciation on its yacht in the sum of \$9,921.75 which the Respondent erroneously and illegally disallowed as deductions. Petitioner computed annual depreciation on its yacht at the rate of 15% of its cost which is a reasonable rate and the full amounts claimed by Petitioner rep-

resent allowable deductions within the meaning of the provisions of the applicable Revenue Acts.

12. The Respondent erroneously and illegally increased Petitioner's net taxable income for the year 1925 by the sum of \$116,850.00. Petitioner, in exchange for certain of its assets, acquired, during the early part of the year 1925, all of the capital stock of Cecil B. deMille Pictures Corporation amounting to 1,000 shares; thereafter and during the year 1925, Petitioner, in exchange for the 1,000 shares of stock of Cecil B. deMille Pictures Corporation and the sum of \$40,000.00, acquired one-half (100,000 shares) of the common stock and 7474 shares of the preferred stock of the Cinema Corporation of America; and in addition to this, Petitioner agreed to and did return to the Cinema Corporation of America 50,000 shares of common stock of the Cinema [12] Corporation of America which was held by it as treasury stock. The acquisition by Petitioner, during the year 1925, of the common and preferred stock of Cinema Corporation of America in the manner and for the considerations hereinabove stated constituted a transaction resulting in neither gain nor loss to Petitioner; said transaction constituted a reorganization within the meaning of the provisions of Section 203 of the Revenue Act of 1924.

13. During the years 1925 and 1926 Petitioner maintained at its place of business a kitchen for which it expended in the maintenance and operation thereof the sums of \$2,314.02 and \$2,712.20, respect-

ively. Petitioner maintained this kitchen in order to provide eating facilities for the officers of Petitioner as well as for actors and actresses connected with Petitioner's business and those business men with whom Petitioner did business; at no time during the years 1925 or 1926 was there an appropriate eating place near Petitioner's studio; furthermore, Petitioner's officers, actors and actresses were able, through the maintenance of the kitchen, to carry on business transactions during luncheon hours. Petitioner's officers and the actors and actresses working for Petitioner, as well as business associates and those interested in the pictures produced by Petitioner, often remained at the studio late at night and during these times it became necessary for Petitioner to maintain an appropriate eating place; notwithstanding the fact that the kitchen was maintained by Petitioner as a business necessity, the Respondent erroneously and illegally disallowed as deductions the foregoing amounts expended by Petitioner in the maintenance and upkeep thereof.

14. Petitioner, in its original income tax return for the year 1926, erroneously took as a deduction for a loss sustained the sum of \$50,000.00; thereafter Petitioner filed an amended income tax return wherein it restored to Petitioner's net taxable income the said \$50,000.00 and paid tax thereon. [13] Notwithstanding these facts, the Respondent erroneously and illegally increased Petitioner's net taxable income by the sum of \$50,000.00.

15. During the year 1926, Petitioner ascertained to be worthless and charged off a bad debt in the sum of \$500.00 owed to it by Otto Pusch for moneys advanced by Petitioner during prior years. This sum constitutes a deduction within the meaning of the provisions of the Revenue Act of 1926, and the action of the Respondent in disallowing same was erroneous and illegal.

16-a. Petitioner's undistributed earnings for the years 1924, 1925 and 1926 were retained for the purpose of protecting Petitioner's investments and for the purpose of enabling it to pursue its legitimate and authorized pursuits. No part of these earnings were retained for the purpose of preventing the imposition of surtaxes upon Petitioner's stockholders. Petitioner was organized for the purpose, among others, of producing and distributing motion pictures. The production and distribution of motion pictures requires very large sums of money. Many pictures which have been produced by Petitioner have cost approximately \$1,000,000.00 each and some of them have cost far in excess of this amount. Petitioner, during the years herein involved, had contracts for the production of motion pictures which were of short duration and which were subject to termination on rather short notice. Disputes over the performance of these contracts and particularly with respect to production costs arose to such an extent that Petitioner was compelled to and did take steps to acquire studio and other facilities for the purpose of producing motion pictures independently of other firms and corporations. Petitioner's

contractual relations with those for whom Petitioner was producing pictures were such at all times during the years 1924, 1925 and 1926 that the distribution of Petitioner's earnings would have so weakened Petitioner's financial position as to have jeopardized its very existence. In addition to [14] the requirements for motion picture production, Petitioner needed in its business very substantial sums of money for the purpose of carrying on its other activities and particularly those relating to the purchase, development and sale of real estate.

At no time during the years herein involved was Petitioner's surplus unreasonably large for the needs of its business; in fact its retained earnings were insufficient to carry on Petitioner's business in the manner contemplated by its officers. Petitioner was not created, nor was it availed of at any time during the years herein involved for the purpose of preventing the imposition of the surtax upon its stockholders through the medium of permitting its gains and profits to accumulate instead of being divided or distributed, consequently the action of Respondent in determining that the retention of Petitioner's earnings for the years 1924, 1925 and 1926 was in violation of Sections 220 of the Revenue Acts of 1924 and 1926 was arbitrary, erroneous and illegal.

16-b. Petitioner alleges that it did not violate the provisions of Sections 220 of the Revenue Acts of 1924 and/or 1926 by retaining its earnings derived by it during any of the years 1924, 1925 and 1926, but in the event that this Board should sus-

tain the Respondent in his determination that the provisions of Section 220 of either the Revenue Act of 1924 or the Revenue Act of 1926 should apply to Petitioner, then Petitioner alleges that the provisions of Section 220 of the Revenue Acts of 1924 and 1926 imposing the tax and/or obligation proposed in the said deficiency letter are so arbitrary and capricious as to amount to confiscation and thus offend the spirit and letter of the Fifth Amendment to the Constitution of the United States of America; furthermore, Petitioner alleges that the provisions of Sections 220 of the Revenue Acts of 1924 and 1926 impose [15] upon Petitioner an unconscionable tax or penalty and that neither the tax nor the penalty is warranted or authorized by the Sixteenth Amendment to the Constitution of the United States of America, nor is the tax or penalty authorized by any other provision of said Constitution.

17. Petitioner is informed and believes and therefore alleges that the time within which assessment might be proposed for the years herein involved expired prior to the date the said deficiency letter was mailed to Petitioner.

WHEREFORE, Petitioner prays that the Board hear and determine this appeal and render judgment in accordance with the foregoing.

THOMAS R. DEMPSEY

A. CALDER MACKAY

Attorneys for Petitioner

508 Security Building

Los Angeles, California. [16]

State of California

County of Los Angeles—ss.

Cecil B. deMille, being first duly sworn, deposes and says: That he is an officer, to-wit, President of CECIL B. deMILLE PRODUCTIONS, INC., the above named Petitioner, and makes this verification for and on behalf of said corporation; that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge, except the matters which are therein stated upon information and belief and that as to those matters he believes it to be true.

(Signed) CECIL B. deMILLE

Subscribed and sworn to before me this 13th day of February, 1931.

[Seal] (Signed) GLADYS ROSSON

Notary Public in and for said County and State.

My Commission Expires June 12, 1931. [17]

“EXHIBIT A”

NP-2-26

TREASURY DEPARTMENT

Washington

Office of

Commissioner of Internal Revenue

Address Reply to

Commissioner of Internal Revenue

And Refer to

Dec. 29, 1930

Cecil B. deMille Productions, Inc.,

c/o Metro-Goldwyn-Mayer Studios,

Culver City, California.

Sirs:

You are advised that the determination of your tax liability for the years 1924, 1925 and 1926 discloses a deficiency of \$856,076.53, as shown in the statement attached.

In accordance with section 274 of the Revenue Act of 1926, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

HOWEVER, IF YOU DO NOT DESIRE TO PETITION, you are requested to execute the enclosed agreement form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this agreement will expedite the closing of your returns by permitting an early assessment of any deficiency

and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the enclosed agreement, or on the date assessment is made, whichever is earlier; WHEREAS IF NO AGREEMENT IS FILED, interest will accumulate to the date of assessment of the deficiency.

Respectfully,
DAVID BURNET,
Commissioner.

By (Signed) J. C. WILMER
Deputy Commissioner.

Enclosures:

Statement

Form 882

Form 870 [18]

STATEMENT.

IT:E:Aj

HR-13777-60D

In re: Cecil B. deMille Productions, Inc.,
c/o Metro-Goldwyn-Mayer Studios,
Culver City, California.

Year	Deficiency in Tax
1924 (Consent)	\$157,599.66
1925 (Consent)	363,605.62
1926 (Consent)	334,871.25
	<hr/>
Total	\$856,076.53

Reference is made to the report of the revenue agent who examined your books of account and records for the years 1924 to 1926, inclusive.

After careful review and consideration the Bureau holds that the findings of the examining officer are correct.

Based on the evidence in the file in the case, the Bureau holds that you are subject to the 50% tax under the provisions of Section 220 of the Revenue Acts of 1924 and 1926.

1924

Net income reported on return		\$102,457.47
Add:		
1. Profit on sale of capital assets	\$ 7,500.00	
2. Amortization of contract dis- allowed	52,240.16	
3. Expense item treated as dividends paid	96,846.46	
4. Depreciation disallowed	14,671.75	
5. Additional dividends received	5,075.00	176,333.37
		<hr/>
		\$278,790.84
Deduct:		
6. Dividends received, Item 5 above	\$ 5,075.00	
7. Partnership losses allowed	9,064.43	14,139.43
		<hr/>
Net income adjusted		\$264,651.41

[19]

EXPLANATION OF CHANGES.

1. Profit derived from sale of three-fourths interest in equity in George W. Derby property (real estate Trust 90).

2. Amortization claimed on account of Famous Players Lasky contract unsubstantiated.

3. This item represents the disallowance of certain claimed expenditures which are treated as distributions of profit to Mr. Cecil B. deMille. The same item is included in the returns for all years 1924 to 1928, inclusive, and the following summary covers such disbursements for each of those years:

	1924	1925	1926	1927	1928
a. Mrs. C. A. deM.	\$24,700.00	\$36,400.00	\$36,400.00	\$43,900.00	\$44,200.00
b. Mrs. E. K. Adams	15,600.00	—	—	—	—
c. Julia Faye	13,000.00	2,500.00	—	—	—
d. Residence	9,924.16	5,975.18	5,695.77	9,292.75	4,437.94
e. Yacht	15,141.93	18,196.83	33,975.85	21,371.26	22,197.28
f. Legal	15,927.50	—	—	—	—
g. Kitchen	—	2,314.02	2,712.20	2,571.92	2,707.04
h. Miscellaneous	2,552.87	2,750.42	2,231.33	2,830.00	6,094.75
Totals	\$96,846.46	\$68,136.45	\$81,015.15	\$79,965.93	\$79,637.01

Items a, b and c were reported as salaries paid and are disallowed as not being paid for services rendered.

Items d and e represent excess "carrying charges" on Laughlin Park and Yacht "Seaward" and are treated as additional distributions of profit or dividends to Mr. Cecil B. deMille.

Item f. Payments to Mr. Neil S. McCarthy reported as representing additional compensation on account of prior year services held to represent additional distributions to Mr. deMille.

Items g and h. Additional miscellaneous disbursements considered as distributions of profit to Mr. deMille.

4. Depreciation disallowed. The depreciation charged off on the following assets for the years

1924 to 1928, inclusive, has been disallowed on account of the property not being used in taxpayer's trade or business in accordance with Article 201.

Regulations 74: [20]

	1924	1925	1926	1927	1928
Laughlin Park. (Mr. deMille's residence)	\$ 4,750.00	\$ 4,818.69	\$ 4,874.50	\$5,294.18	\$5,298.90
Yacht "Seaward" (Mr. deMille's yacht)	9,921.75	9,921.75	9,916.78	—	2,629.84
Totals	\$14,671.75	\$14,740.44	\$14,791.28	\$5,294.18	\$7,928.74

5. Additional dividends received. Dividends received from the Los Angeles Speedway Association, \$5,075.00, shown on your records as a liquidating dividend or a return of capital have been restored to income as liquidation did not take place until during the year 1928.

6. The item of dividends shown above deducted from corporate income for taxation purposes.

7. Loss from partnership. Distributive loss in real estate Trust #90, Bank of Italy, not previously claimed.

COMPUTATION OF TAX.

Net income adjusted		\$264,651.41
Income tax at 12½%		33,081.43
Tax under Section 220, Revenue Act of 1924:		
Net income	\$264,651.41	
Add:		
Dividends	9,999.41	
Taxable at 50%	\$274,650.82	137,325.41
Total tax assessable		\$170,406.84
Tax previously assessed		12,807.18
Deficiency in tax		\$157,599.66

1925

Net income reported on return		\$400,623.31
Add:		
1. Profit on sale of capital assets	\$116,850.00	
2. Amortization of contract dis- allowed	37,314.40	
3. Dividends received	175.00	
4. Expense items treated as divi- dends paid	68,136.45	
5. Partnership income	8,473.92	
6. Depreciation disallowed	14,740.44	245,690.21
		<hr/>
		\$646,313.52
Deduct:		
7. Dividends received		175.00
		<hr/>
Net income adjusted		\$646,138.52
		[21]

EXPLANATION OF CHANGES.

1. Profit from sale of assets computed as follows:		
Proceeds of sale, 7,474 shares preferred stock of Cinema Corporation of America at \$25.00 per share		\$186,850.00
Cost of assets sold:		
Option on Thomas H. Ince Studio	\$50,000.00	
Equipment	20,000.00	
Contracts	None	70,000.00
		<hr/>
Profit on sales taxable in 1925		\$116,850.00
2. Amortization claimed on account of Famous Players contract unsubstantiated.		
3. and 7. Dividends received of \$175.00. Same explanation as Item 5 for 1924.		
4. Explained under Item 3 for 1924.		
5. Distributive income in real estate Trust #90, Bank of Italy, omitted from return.		
6. Explained under Item 4 for 1924.		

COMPUTATION OF TAX.

Net income adjusted		\$646,138.52
Income tax at 13%		83,998.01
Tax under Section 220 of the Revenue Act of 1924:		
Net income	\$646,138.52	
Add:		
Dividends	17,238.76	
	<hr/>	
Taxable at 50%	\$663,377.28	331,688.64
Total tax assessable		\$415,686.65
Tax previously assessed		52,081.03
		<hr/>
Deficiency in tax		\$363,605.62
		[22]

1926

Net income reported on return filed		\$442,509.09
Add:		
1. Amortization contract dis- allowed	\$21,193.85	
2. Expense deductions treated as dividends paid	81,015.15	
3. Partnership income	5,124.72	
4. Bad debts	50,500.00	
5. Depreciation disallowed	14,791.28	172,625.00
	<hr/>	
Net income adjusted		\$615,134.09

EXPLANATION OF CHANGES.

- Amortization claimed on account of Famous Players Lasky contract unsubstantial.
- Explained under Item 3 in 1924.
- Distributive income in real estate Trust #90, Bank of Italy, omitted from return.
- Deduction for bad debts disallowed as follows:

Cinema stock loss eliminated on amended return	\$50,000.00
Loan made to Joe Busch during 1922 charged off in 1926 held to represent a forgiveness of indebtedness	500.00
Total	<hr/>
	\$50,500.00
- Explained under Item 4 in 1924.

COMPUTATION OF TAX.

Net income adjusted		\$615,134.09
Income tax at 13½%		83,043.10
Tax under Section 220, Revenue Act of 1926:		
Net income	\$615,134.09	
Add: Dividends	21,499.66	
	<hr/>	
Taxable at 50%	\$636,633.75	318,316.88
		<hr/>
Total tax assessable		\$401,359.98
		[23]
Amount brought forward		\$401,359.98
Tax previously assessed:		
Original return	\$59,738.73	
Amended return	6,750.00	66,488.73
	<hr/>	<hr/>
Deficiency in tax		\$334,871.25

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

[Endorsed]: Filed Feb. 19, 1931. [24]

[Title of Court and Cause—Docket No. 52996.]

ANSWER.

Comes now the Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, and for answer to the petition filed herein, admits and denies as follows:

I. Admits the allegations of paragraph I of the petition.

II. Admits the allegations of paragraph II of the petition.

III. Admits the allegations of paragraph III of the petition.

IV. (1) to (15) incl. Denies that the respondent erred as alleged in subparagraphs (1) to (15) inclusive, of paragraph IV of the petition.

V. (1) to (17) incl. Denies the allegations contained in subparagraphs (1) to (17) inclusive, of paragraph V of the petition.

Denies each and every other allegation contained in the petition not hereinbefore specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the Commissioner's determination be approved and that the petition be dismissed and the appeal denied.

(Signed) C. M. CHAREST

General Counsel,
Bureau of Internal Revenue.

Of Counsel:

A. H. FAST,
HAROLD D. THOMAS,
Special Attorneys,
Bureau of Internal Revenue.

[Endorsed]: Filed Mar. 25, 1931. [25]

[Title of Court and Cause—Docket No. 52996.]

AMENDMENT TO PETITION.

Comes now the Petitioner in the above entitled case and having first obtained leave of the Board files the following as an amendment to its petition heretofore filed herein:

Petitioner withdraws sub-paragraph 16-b under Paragraph V and substitutes the following in lieu thereof:

16-b. Petitioner alleges that it did not violate the provisions of Sections 220 of the Revenue Acts of 1924 and/or 1926 by retaining the earnings derived by it during any of the years 1924, 1925 and 1926, but in the event that this Board should sustain the Respondent in his determination that the provisions of Section 220 of either the Revenue Act of 1924 or the Revenue Act of 1926 should apply to Petitioner, then Petitioner alleges that the provisions of Sections 220 of the Revenue Acts of 1924 and 1926 imposing the tax and/or obligation proposed in the said deficiency letter are so arbitrary and capricious as to amount to confiscation and thus offend the spirit and letter of the Fifth Amendment to the Constitution of the United States of America.

Petitioner further alleges that the provisions of Section 220 of the Revenue Act of 1924 and Section 220 of the Revenue Act of 1926 violate the Tenth Amendment to the Constitution of the United States in that said sections constitute attempts by Congress under the guise of tax to exercise power not delegated to the United States but one reserved to the States; that [26] the regulation of the affairs of corporations which are chartered by States is reserved to State legislatures; and that all discretion on the declarations of dividends has been committed to boards of directors by the California Legislature and responsibility and liability therefor have been fixed upon them.

Petitioner further alleges that the provisions of Section 220 of the Revenue Act of 1924 and Section

220 of the Revenue Act of 1926 impose upon Petitioner an unconscionable tax or penalty and that neither the tax nor the penalty is warranted or authorized by the Sixteenth Amendment to the Constitution of the United States of America, nor is the tax or penalty authorized by any other provision of said Constitution; furthermore, the provisions of Section 220 of the Revenue Act of 1924 and Section 220 of the Revenue Act of 1926 are contrary to the general and implied provisions of the United States Constitution in that they impose a penalty upon one taxpayer for the failure of another taxpayer to pay taxes not imposed; Petitioner further alleges that the said sections violate the spirit of the Constitution and particularly the Eighth Amendment thereof in that the penalty or tax imposed is excessive, cruel and unusual. The Respondent erroneously and illegally failed and neglected to hold the provisions of Section 220 of the Revenue Act of 1924 and Section 220 of the Revenue Act of 1926 unconstitutional and void.

THOMAS R. DEMPSEY

A. CALDER MACKAY

Attorneys for Petitioner,
1104 Pacific Mutual Building,
Los Angeles, California. [27]

State of California,
County of Los Angeles—ss.

CECIL B. DeMILLE, being first duly sworn, deposes and says: That he is an officer, to wit, PRESIDENT of CECIL B. DeMILLE PRODUCTIONS,

INC., the above named Petitioner, and makes this verification for and on behalf of said corporation; that he has read the foregoing Amendment to Petition and knows the contents thereof and that the same is true of his own knowledge, except the matters which are therein stated upon information and belief and that as to those matters he believes it to be true.

(Signed) CECIL B. DeMILLE

Subscribed and sworn to before me this day of December, 1933.

.....,
Notary Public in and for said County and State.

[Endorsed]: Filed at hearing, Dec. 16, 1933. [28]

United States Board of Tax Appeals

Docket No. 65123.

CECIL B. DeMILLE PRODUCTIONS, INC.,
a corporation,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION.

The above named Petitioner hereby appeals from the determination of the Respondent set forth in his deficiency letter dated March 1, 1932, IT:E:Aj HR-13777-60D, and as the basis of this proceeding alleges as follows:

I.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of California, with its principal place of business at Los Angeles, California.

II.

The notice of deficiency, copy of which is attached hereto, marked "Exhibit A", was mailed to Petitioner on or about March 1, 1932.

III.

The taxes in controversy are income taxes for the year 1929 and amount to the sum of \$104,423.60.

IV.

The determination of the taxes set forth in the notice of deficiency is based upon the following errors:

(a) The Respondent erred in disallowing as a deduction for salary paid to one of its officers during the year 1929 the sum of \$44,200.00.

(b) The Respondent erred in disallowing as a deduction for the year 1929 the sum of \$9,921.58 expended by Petitioner in the maintenance and [29] upkeep of its properties.

(c) The Respondent erred in disallowing as a deduction for the year 1929 the sum of \$23,322.06 expended by Petitioner in the maintenance and upkeep of its yacht.

(d) The Respondent erred in disallowing as a deduction for the year 1929 the sum of \$2,428.50 expended by Petitioner in the maintenance and upkeep of its kitchen.

(e) The Respondent erred in disallowing as a deduction for the year 1929 the sum of \$1,323.60 expended by Petitioner in the maintenance and upkeep of its stallion.

(f) The Respondent erred in disallowing as a deduction for the year 1929 the sum of \$388.00 representing taxes paid by Petitioner on its yacht.

(g) The Respondent erred in disallowing as a deduction for the year 1929 the sum of \$6,643.84 representing depreciation sustained by Petitioner on its properties.

(h) The Respondent erred in disallowing as a deduction for the year 1929 the sum of \$200.00 paid by Petitioner to the California Development Association.

(i) The Respondent erred in disallowing as a deduction for the year 1929 the sum of \$1,000.00 expended by Petitioner as story prizes.

(j) The Respondent erroneously and illegally determined that Petitioner's undistributed earnings for the year 1929 were retained by it for the purpose of preventing the imposition of the surtax on Petitioner's stockholders contrary to the provisions of Section 104 of the Revenue Act of 1928; the Respondent erred in failing to hold that said section was unconstitutional and void. [30]

V.

The facts upon which Petitioner relies as the basis of this proceeding are as follows:

1. Petitioner was incorporated under the laws of the State of California on or about June 10, 1922 and ever since said time has been and now is a corporation with its principal place of business at Los Angeles, California.

2. Petitioner filed its income tax return for the year 1929 with the Collector of Internal Revenue for the Sixth Collection District at Los Angeles, California.

3. Petitioner was organized for the purposes, among others, of producing and distributing motion pictures, carrying on a real estate business, ranching, farming and buying and selling stocks and bonds for profit, and at all times since its organization Petitioner has been actively engaged and is now engaged in those pursuits which are authorized and permitted by its Articles of Incorporation.

4. During the year 1929 Petitioner paid to one of its officers and directors for services rendered by such officer and director, the sum of \$44,200.00. Notwithstanding the foregoing and the fact that the services rendered by said officer and director materially benefited Petitioner, the Respondent erroneously and illegally disallowed as a deduction the amount so paid.

5. During the year 1929 Petitioner expended in the maintenance and operation of its residential properties, the sum of \$9,921.58. This sum represents an ordinary and necessary expenditure within the meaning of the provisions of the Revenue Act of 1928. Notwithstanding the foregoing, the Respondent erroneously and illegally disallowed this sum as a deduction.

6. During the year 1922 Petitioner acquired for use in its [31] business a yacht for the total sum of \$66,154.03. Petitioner expended in the maintenance and operation of its yacht during the year 1929 the sum of \$23,322.06. This sum and the whole thereof

constitutes an ordinary and necessary expense within the meaning of the provisions of the Revenue Act of 1928, and the action of the Respondent in disallowing the same as a deduction was erroneous and illegal.

7. During the year 1929 Petitioner maintained at its place of business a kitchen for which it expended in the maintenance and operation thereof the sum of \$2,428.50. Petitioner maintained this kitchen in order to provide eating facilities for the officers of Petitioner as well as for actors and actresses connected with Petitioner's business and those business men with whom Petitioner did business; at no time during the year 1929 was there an appropriate eating place near Petitioner's studio; furthermore, Petitioner's officers, actors and actresses were able through the maintenance of the kitchen, to carry on business transactions during luncheon hours. Petitioner's officers and the actors and actresses working for Petitioner, as well as business associates and those interested in the pictures produced by Petitioner, often remained at the studio late at night and during these times it became necessary for Petitioner to maintain an appropriate eating place; notwithstanding the fact that the kitchen was maintained by Petitioner as a business necessity, the Respondent erroneously and illegally disallowed as a deduction the foregoing amount expended by Petitioner in the maintenance and operation thereof.

8. During the year 1929 Petitioner expended in the maintenance and upkeep of its stallion the sum of \$1,323.60. Notwithstanding the foregoing, the

Respondent erroneously and illegally disallowed the same as a deduction.

9. During the year 1929 Petitioner paid the sum of \$388.00 which [32] represented taxes assessed by the State of California on Petitioner's yacht, consequently the action of the Respondent in disallowing this sum as a deduction was erroneous and illegal.

10. During the year 1929 Petitioner was the owner of certain buildings on which it sustained depreciation in the sum of \$5,302.87; Petitioner also sustained depreciation on its stallion during the year 1929 in the sum of \$950.00; during said year Petitioner also sustained depreciation in the sum of \$390.97 on its yacht fixtures and tools. The foregoing depreciation charges constitute allowable deductions within the meaning of the provisions of the Revenue Act of 1928 and the action of the Respondent in disallowing them was erroneous and illegal.

11. During the year 1929 Petitioner paid to the California Development Association the sum of \$200.00 which was paid by Petitioner in the belief and hope that Petitioner would derive an indirect benefit therefrom. The action of the Respondent in disallowing the same as a deduction was erroneous and illegal.

12. During the year 1929 Petitioner paid out the sum of \$1,000.00 in story prizes which Petitioner alleges represents an ordinary and necessary expense in the conduct of its business, consequently the action of the Respondent in disallowing the same as a deduction was erroneous and illegal.

13-a. Petitioner's undistributed earnings for the year 1929 were retained for the purpose of protecting Petitioner's investments and for the purpose of enabling it to pursue its legitimate and authorized pursuits. No part of these earnings was retained for the purpose of preventing the imposition of surtaxes upon Petitioner's stockholders. Petitioner was organized for the purpose, among others, of producing and distributing motion pictures which requires very large sums of money. Many pictures which have been [33] produced by Petitioner have cost approximately \$1,000,000.00 each and some of them have cost far in excess of this amount. The production of motion pictures has been and now is a rather hazardous business enterprise, the stability of which is constantly being affected by changes and improvements. The advent of sound pictures revolutionized the industry. These and other improvements that are constantly confronting the motion picture industry make it necessary for producers to maintain large sums of working capital. In addition to the requirements for motion picture production Petitioner needed in its business substantial sums of money for the purpose of carrying on its other activities, particularly those relating to the purchase, improvement and sale of real estate. The distribution of Petitioner's earnings for the year 1929 would have so weakened Petitioner's financial position as to have jeopardized its very existence.

At no time during the year herein involved was Petitioner's surplus unreasonably large for the needs of its business, in fact its retained earnings

were insufficient to carry on Petitioner's business in the manner contemplated by its officers. Petitioner was not created nor was it availed of at any time during the year herein involved for the purpose of preventing the imposition of the surtax upon its stockholders through the medium of permitting its gains and profits to accumulate instead of being divided or distributed, consequently the action of the Respondent in determining that the retention of Petitioner's earnings for the year 1929 was in violation of Section 104 of the Revenue Act of 1928 was arbitrary, erroneous and illegal.

11-b. Petitioner alleges that it did not violate the provisions of Section 104 of the Revenue Act of 1928 by retaining the earnings derived by it during the year 1929, but in the event that this Board should sustain [34] the Respondent in his determination that the provisions of Section 104 of the Revenue Act of 1928 should apply to Petitioner, then Petitioner alleges that the provisions of Section 104 of the Revenue Act of 1928 imposing the tax and/or obligation proposed in the said deficiency letter are so arbitrary and capricious as to amount to confiscation and thus offend the spirit and letter of the Fifth Amendment to the Constitution of the United States of America; furthermore Petitioner alleges that the provisions of Section 104 of the Revenue Act of 1928 impose upon Petitioner an unconscionable tax or penalty and that neither the tax nor the penalty is warranted or authorized by the Sixteenth Amendment to the Constitution of the United States of America, nor is the tax or penalty author-

ized by any other provision of said Constitution. The Respondent erroneously and illegally failed and neglected to hold the provisions of Section 104 of the Revenue Act of 1928 unconstitutional and void.

WHEREFORE, Petitioner prays that the Board hear and determine this appeal and render judgment in accordance with the foregoing. Petitioner prays for such other and further relief as may be deemed meet and proper in the premises.

THOMAS R. DEMPSEY

A. CALDER MACKAY

Attorneys for Petitioner,
1104 Pacific Mutual Bldg.,
Los Angeles, California. [35]

State of California,
County of Los Angeles—ss.

CECIL B. deMILLE, being first duly sworn, deposes and says: That he is an officer, to-wit, President of CECIL B. deMILLE PRODUCTIONS, INC., the above named Petitioner, and makes this verification for and on behalf of said corporation; that he has read the foregoing Petition and is familiar with the statements contained therein and that the same are true as he verily believes.

(Signed) CECIL B. deMILLE.

Subscribed and sworn to before me this 21 day of April, 1932.

[Seal] (Signed) GLADYS ROSSON,
Notary Public in and for said County and State.

My Commission expires June 12, 1935. [36]

NP-2-28

“EXHIBIT A”

TREASURY DEPARTMENT

Washington

Office of

Commissioner of Internal Revenue Mar 1, 1932.

Cecil B. de Mille Productions, Incorporated,

c/o Dempsey & Mackay,

Pacific Mutual Building,

Los Angeles, California.

Sirs:

You are advised that the determination of your tax liability for the year 1929 discloses a deficiency of \$104,423.60, tax as shown in the statement attached.

In accordance with section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

HOWEVER, IF YOU DO NOT DESIRE TO PETITION, you are requested to execute the enclosed agreement form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this agreement will expedite the closing of your return by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the enclosed agreement, or on the date assessment is made, whichever is earlier; WHEREAS IF

NO AGREEMENT IS FILED, interest will accumulate to the date of assessment of the deficiency.

Respectfully,
DAVID BURNET,
Commissioner.

(Signed) By J. C. WILMER
Deputy Commissioner.

Enclosures:

Statement
Form 882
Form 870 [37]

STATEMENT.

IT:E:Aj

HR-13777-60D

In re: Cecil B. de Mille Productions, Inc.,
c/o Dempsey and Mackay,
Pacific Mutual Building,
Los Angeles, California.

Year—1929.

Tax Liability—\$109,843.97.

Tax Assessed—\$5,420.37.

Deficiency—\$104,423.60.

Reference is made to the report of the revenue agent who examined your books of account and records for the year 1929. After careful review and consideration, the Bureau holds that the findings of the examining officer are correct.

Based on the evidence in the file in the case, the Bureau holds that you are subject to the 50% tax under the provisions of Section 104 of the Revenue Act of 1928.

Net income reported on return		\$ 49,276.09
Add:		
1. Expense deductions treated as distribution of profits	\$82,971.23	
2. Depreciation disallowed	6,643.84	
3. Depletion disallowed	769.61	
4. Miscellaneous expenses dis- allowed	1,767.01	92,151.69
		<hr/>
		\$141,427.78
Deduct:		
5. Profit on sale of stock reduced	\$ 3,733.39	
6. Los Angeles Speedway Company liquidation dividend	923.41	
7. Amortization of cost of royalty interest	325.00	4,981.80
		<hr/>
Net income adjusted		\$136,445.98

EXPLANATION OF CHANGES.

1. This item represents the disallowance of certain claimed expenditures which are treated as distributions of profit to Mr. Cecil B. de Mille. The expenses constituting the amount of \$82,971.23 are as follows: [38]

a. Salary paid to Mrs. Constance A. de Mille	\$44,200.00
b. Residence, Laughlin Park	9,921.58
c. Yacht	23,322.06
d. Kitchen	2,428.50
e. Show horse	2,052.09
f. Miscellaneous expenses	1,047.00
	<hr/>
	\$82,971.23

a. was reported as salary paid and is disallowed as not being paid for services rendered.

b. and c. represent excess carrying charges on Laughlin Park residence and Yacht "Seaward" and are treated as additional distribution of profit of dividend to Mr. Cecil B. de Mille.

d. and e. representing kitchen expense and show horse expense are considered as dividends in the form of distribution of profits to Mr. de Mille.

f. representing taxes paid on yacht \$388.00, Hollywood Athletic Club dues \$113.00, cigars \$46.00 and depreciation to Dr. George R. Andrews \$500.00 are considered as additional distribution of profit to Mr. de Mille.

2. Depreciation charged off on the following items for the year 1929 has been disallowed on account of the property not being used in the taxpayer's trade or business in accordance with Article 201, Regulations 74:

Laughlin Park, residence	\$5,302.87
Show horse	950.00
Laughlin Park tools	45.00
Yacht fixtures	345.97
	<hr/>
Total	\$6,643.84

3. Pulliam Well depletion at 27½% disallowed. Amortization allowance in lieu of depletion allowed under Item 7.

4. Miscellaneous expenses disallowed as follows:

[Endorsed]: Filed April 27, 1932. [39]

[Title of Court and Cause—Docket No. 65123.]

ANSWER.

Comes now the Commissioner of Internal Revenue by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, and for answer to the petition filed herein, admits and denies as follows:

I. Admits the matter contained in paragraph I of the petition.

II. Admits that the notice of deficiency was mailed to the petitioner on March 1, 1932 and denies the remainder of paragraph II of the petition.

III. Admits the matter contained in paragraph III of the petition.

IV-(a) to (j) incl. Denies any knowledge or information sufficient to form a belief as to the truth of the matters contained in subparagraphs (a) to (j) inclusive, of paragraph IV of the petition.

V-1 to 12, incl. Denies the matters contained in subparagraphs 1 to 12 inclusive, of paragraph V of the petition.

V-13-a. Denies the matter contained in subparagraph 13-a of paragraph V of the petition.

V-11-b. Denies the matter contained in subparagraph 11-b of paragraph V of the petition.

Denies each and every other matter contained in the petition not hereinbefore specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the Commissioner's determination be approved and that the petition be dismissed and the appeal denied.

C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.

Of Counsel:

A. H. FAST,
F. L. VAN HAAFTEN,
Special Attorneys,
Bureau of Internal Revenue.

[Endorsed]: Filed June 10, 1932. [40]

[Title of Court and Cause—Docket No. 65123.]

AMENDMENT TO PETITION.

Comes now the Petitioner in the above entitled case and having first obtained leave of the Board files the following as an amendment to its petition heretofore filed herein:

Petitioner withdraws subparagraph 11-b under Paragraph V and substitutes the following in lieu thereof:

11-b. Petitioner alleges that it did not violate the provisions of Section 104 of the Revenue Act of 1928 by retaining the earnings derived by it during the year 1929, but in the event that this Board should sustain the Respondent in his determination that the provisions of Section 104 of the Revenue Act of 1928 should apply to Petitioner, then Petitioner alleges that the provisions of Sec-

tion 104 of the Revenue Act of 1928 imposing the tax and/or obligation proposed in the said deficiency letter are so arbitrary and capricious as to amount to confiscation and thus offend the spirit and letter of the Fifth Amendment to the Constitution of the United States of America.

Petitioner further alleges that the provisions of Section 104 of the Revenue Act of 1928 violate the Tenth Amendment to the Constitution of the United States in that said section constitutes attempts by Congress under the guise of tax to exercise power not delegated to the United States but one reserved to the States; that the regulation of the affairs of corporations which [41] are chartered by States is reserved to State legislatures; and that all discretion on the declarations of dividends has been committed to boards of directors by the California Legislature and responsibility and liability therefor have been fixed upon them.

Petitioner further alleges that the provisions of Section 104 of the Revenue Act of 1928 impose upon Petitioner an unconscionable tax or penalty and that neither the tax nor the penalty is warranted or authorized by the Sixteenth Amendment to the Constitution of the United States of America, nor is the tax or penalty authorized by any other provision of said Constitution; furthermore, the provisions of Section 104 of the Revenue Act of 1928 are contrary to the general and implied provisions of the United States Constitution in that they impose a penalty upon one taxpayer for the failure of another taxpayer to pay taxes not im-

posed; Petitioner further alleges that the said section violates the spirit of the Constitution and particularly the Eighth Amendment thereof in that the penalty or tax imposed is excessive, cruel and unusual. The Respondent erroneously and illegally failed and neglected to hold the provisions of Section 104 of the Revenue Act of 1928 unconstitutional and void.

THOMAS R. DEMPSEY,
A. CALDER MACKAY,
Attorneys for Petitioner,
1104 Pacific Mutual Building,
Los Angeles, California. [42]

State of California
County of Los Angeles.—ss.

CECIL B. deMILLE, being first duly sworn, deposes and says: That he is an officer, to wit, President of CECIL B. deMILLE PRODUCTIONS, INC., the above named Petitioner, and makes this verification for and on behalf of said corporation; that he has read the foregoing amendment to petition and knows the contents thereof and that the same is true of his own knowledge, except the matters which are therein stated upon information and belief and that as to those matters he believes to be true.

CECIL B. deMILLE (Sgd.)

Subscribed and sworn to before me this day of
December, 1933.

.....
Notary Public in and for said
County and State.

[Endorsed]: Filed at hearing, Dec. 16, 1933. [43]

United States Board of Tax Appeals.

Docket No. 61290.

CECIL B. deMILLE PRODUCTIONS, INC.,
a Corporation,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION.

The above named Petitioner hereby appeals from the determination of the Respondent set forth in his deficiency letter dated November 17, 1931, IT:E: Aj HR-13777-60D, and as the basis of this proceeding alleges as follows:

I.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of California, with its principal place of business at Los Angeles, California.

II.

The notice of deficiency, copy of which is attached hereto, marked "Exhibit A", was mailed to Petitioner on or about November 17, 1931.

III.

The taxes in controversy are income taxes for the years 1927 and 1928 and amount to the total sum of \$525,817.40.

IV.

The determination of the taxes set forth in the notice of deficiency is based upon the following errors:

(a) The Respondent erred in disallowing as deductions for salaries paid during the years 1927 and 1928, respectively, the sums of \$43,900.00 and \$44,200.00, respectively.

(b) The Respondent erred in disallowing as deductions for expenditures made by Petitioner in the upkeep and maintenance of its properties during the years 1927 and 1928, respectively, the sums of \$9,292.75 and \$4,437.94, respectively.

(c) The Respondent erred in disallowing as deductions for the maintenance and upkeep of Petitioner's yacht for the years 1927 and 1928, respectively, the sums of \$21,371.26 and \$22,197.28, respectively.

(d) The Respondent erred in disallowing as deductions for the expenditures made by Petitioner in the upkeep and maintenance of its kitchen during the years 1927 and 1928, respectively, the sums of \$2,571.92 and \$2,707.04, respectively.

(e) The Respondent erred in disallowing as deductions for miscellaneous expenditures made in connection with Petitioner's business during the years 1927 and 1928, respectively, the sums of \$2,830.00 and \$6,094.75, respectively.

(f) The Respondent erred in disallowing as deductions for depreciation of Petitioner's properties sustained during the years 1927 and 1928, respectively, the sums of \$5,294.18 and \$5,298.90, respectively.

(g) The Respondent erred in disallowing as a deduction for the year 1928 the sum of \$2,629.84 representing depreciation sustained during said year on Petitioner's yacht.

(i) The Respondent erred in disallowing as a deduction for the year 1928 the sum of \$10,000.00 representing a loss sustained by Petitioner during said year.

(j) The Respondent erred in disallowing as a deduction for the year 1928 the sum of \$6,147.46 representing debts ascertained to be worthless and charged off during said year.

(k) The Respondent erroneously and illegally determined that Petitioner's undistributed earnings for each of the years 1927 and 1928 were [45] retained by it for the purpose of preventing the imposition of the surtax on Petitioner's stockholders contrary to the provisions of Section 220 of the Revenue Act of 1926 and Section 104 of the Revenue Act of 1928; the Respondent erred in failing to hold that said sections were unconstitutional and void.

(l) The Respondent erred in failing to abide by the various provisions of the Revenue Acts relating to the time within which assessments of deficiencies may be made.

V.

The facts upon which Petitioner relies as the basis of this proceeding are as follows:

1. Petitioner was incorporated under the laws of the State of California on or about June 10, 1922 and ever since said time has been and now is

a corporation with its principal place of business at Los Angeles, California.

2. Petitioner was organized for the purposes, among others, of producing and distributing motion pictures, carrying on a real estate business, ranching, farming and buying and selling stocks and bonds for profit, and at all times since its organization Petitioner has been actively engaged and is now engaged in those pursuits which are authorized and permitted by its Articles of Incorporation.

3. During the respective years of 1927 and 1928 Petitioner paid to one of its officers and directors, for services rendered by such officer and director, the sums of \$43,900.00 and \$44,200.00, respectively. These sums paid by Petitioner during these years were reasonable in amount in view of the benefit Petitioner derived in services rendered to it and notwithstanding this fact, the Respondent erroneously and illegally disallowed as deductions these respective sums.

4. Petitioner expended in the maintenance and operation of its residential properties during the years 1927 and 1928, respectively, the sums [46] of \$9,292.75 and \$4,437.94, respectively. These sums represent ordinary and necessary expenditures within the meaning of the provisions of the Revenue Acts of 1926 and 1928. Notwithstanding these facts, the Respondent erroneously and illegally disallowed these respective sums as deductions.

5. During the year 1922 Petitioner acquired for use in its business a yacht for the total sum of

\$66,145.03. Petitioner expended in the maintenance and operation of its yacht during the years 1927 and 1928, respectively, the sums of \$21,371.26 and \$22,197.28, respectively, all of which constitute ordinary and necessary expenses within the meaning of the provisions of the Revenue Acts of 1926 and 1928, and which the Respondent erroneously and illegally refused to allow as deductions.

6. During the years 1927 and 1928 Petitioner maintained at its place of business a kitchen for which it expended in the maintenance and operation thereof the sums of \$2,571.92 and \$2,707.04, respectively. Petitioner maintained this kitchen in order to provide eating facilities for the officers of Petitioner as well as for actors and actresses connected with Petitioner's business and those business men with whom Petitioner did business; at no time during the years 1927 and 1928 was there an appropriate eating place near Petitioner's studio; furthermore, Petitioner's officers, actors and actresses were able through the maintenance of the kitchen, to carry on business transactions during luncheon hours. Petitioner's officers and the actors and actresses working for Petitioner, as well as business associates and those interested in the pictures produced by Petitioner, often remained at the studio late at night and during these times it became necessary for Petitioner to maintain an appropriate eating place; notwithstanding the fact that the kitchen was maintained by Petitioner as a business necessity, the Respondent erroneously and

illegally disallowed as deductions the [47] foregoing amounts expended by Petitioner in the maintenance and operation thereof.

7. Petitioner during the years 1927 and 1928 made miscellaneous expenditures in the conduct of its business in the total sums of \$2,830.00 and \$6,094.75, respectively, which the Respondent erroneously and illegally disallowed as deductions; these expenditures constitute ordinary and necessary expenses within the meaning of the provisions of the Revenue Acts of 1926 and 1928.

8. During the years 1927 and 1928 Petitioner was the owner of certain buildings on which it sustained depreciation in the respective sums of \$5,294.18 and \$5,298.90. These depreciation charges constitute allowable deductions within the meaning of the provisions of the Revenue Acts of 1926 and 1928, and the action of the Respondent in disallowing them was erroneous and illegal.

9. During the year 1928 Petitioner sustained depreciation on its yacht in the sum of \$2,629.84 which the Respondent erroneously and illegally disallowed as a deduction. The Respondent's disallowance of this sum as a deduction was based upon his erroneous assumption that the yacht did not belong to nor was it used by Petitioner in the conduct of its business.

10. About December 14, 1926, Petitioner acquired 150 shares of stock of the California Air Construction Company for which it paid the sum of \$10,000.00. Petitioner is informed and believes

and therefore alleges that during the year 1928 the California Air Construction Company operated at a very substantial loss and became insolvent to the extent of more than \$90,000.00. Petitioner was further informed and believes that a great many judgments had been filed against said California Air Construction Company; that on account of the foregoing Petitioner's investment in the stock of the California Air Construction Company became worthless and Petitioner sustained during that [48] year a loss to the full extent thereof, to-wit: the sum of \$10,000.00.

11. Petitioner, during the year 1928, ascertained to be worthless and charged off the sum of \$1,697.46 which represented a debt due Petitioner from the California Air Construction Company. This company, as heretofore alleged, became insolvent in 1928 and the ascertainment by Petitioner was reasonable under the circumstances and therefore this sum constitutes a deduction within the meaning of the provisions of the Revenue Act of 1926 as amended by the Revenue Act of 1928. During the same year, to-wit, 1928, Petitioner also ascertained to be worthless and charged off as a bad debt the sum of \$4,450.00 which represented total loans made by Petitioner to one Rudolph Berliner. Petitioner, during the year 1928, became convinced that no collection could be made from Mr. Berliner and having ascertained the debt to be worthless charged the same off its books of account. Notwithstanding these facts, the Respondent erroneously and illegally

treated the transaction as a forgiveness of indebtedness and therefore disallowed the same as a deduction.

12-a. Petitioner's undistributed earnings for the years 1927 and 1928 were retained for the purpose of protecting Petitioner's investments and for the purpose of enabling it to pursue its legitimate and authorized pursuits. No part of these earnings was retained for the purpose of preventing the imposition of surtaxes upon Petitioner's stockholders. Petitioner was organized for the purposes, among others, of producing and distributing motion pictures. The production and distribution of motion pictures requires very large sums of money. Many pictures which have been produced by Petitioner have cost approximately \$1,000,000.00 each and some of them have cost far in excess of this amount. Petitioner, during the years herein involved, had contracts for the production of motion pictures which were of short duration and which were subject to termination on rather short notice. Disputes over [49] the performance of these contracts and particularly with respect to production costs arose to such an extent that Petitioner was compelled to and did take steps to acquire studio and other facilities for the purpose of producing motion pictures independently of other firms and corporations. Petitioner's contractual relations with those for whom Petitioner was producing pictures were such at all times during the years 1927 and 1928, as well as during prior years, that the dis-

tribution of Petitioner's earnings would have so weakened Petitioner's financial position as to have jeopardized its very existence. The production of motion pictures has been and now is a rather hazardous business enterprise, the stability of which is constantly being affected by changes and improvements. The advent of sound pictures revolutionized the industry. These and other improvements that are constantly confronting the motion picture industry make it necessary for producers to maintain large sums of working capital. In addition to the requirements for motion picture production, Petitioner needed in its business substantial sums of money for the purpose of carrying on its other activities, particularly those relating to the purchase, improvement and sale of real estate.

At no time during the years herein involved was Petitioner's surplus unreasonably large for the needs of its business; in fact its retained earnings were insufficient to carry on Petitioner's business in the manner contemplated by its officers. Petitioner was not created nor was it availed of at any time during the years herein involved for the purpose of preventing the imposition of the surtax upon its stockholders through the medium of permitting its gains and profits to accumulate instead of being divided or distributed, consequently the action of the Respondent in determining that the retention of Petitioner's earnings for the years 1927 and 1928 was in violation of Section 220 of the

Revenue Act of 1926 and Section 104 of the Revenue Act of [50] 1928 was arbitrary, erroneous and illegal.

12-b. Petitioner alleges that it did not violate the provisions of Section 220 of the Revenue Act of 1926 and/or Section 104 of the Revenue Act of 1928 by retaining the earnings derived by it during either of the years 1927 and 1928, but in the event that this Board should sustain the Respondent in his determination that the provisions of Section 220 of the Revenue Act of 1926 and/or Section 104 of the Revenue Act of 1928 should apply to Petitioner, then Petitioner alleges that the provisions of Section 220 of the Revenue Act of 1926 and Section 104 of the Revenue Act of 1928 imposing the tax and/or obligation proposed in the said deficiency letter are so arbitrary and capricious as to amount to confiscation and thus offend the spirit and letter of the Fifth Amendment to the Constitution of the United States of America; furthermore, Petitioner alleges that the provisions of Section 220 of the Revenue Act of 1926 and Section 104 of the Revenue Act of 1928 impose upon Petitioner an unconscionable tax or penalty and that neither the tax nor the penalty is warranted or authorized by the Sixteenth Amendment to the Constitution of the United States of America, nor is the tax or penalty authorized by any other provision of said Constitution. The Respondent erroneously and illegally failed and neglected to hold the provisions of Section 220

of the Revenue Act of 1926 and Section 104 of the Revenue Act of 1928 unconstitutional and void.

13. Petitioner is informed and believes and therefore alleges that the time within which assessment might be proposed for the years herein involved expired prior to the date the said deficiency letter was mailed to Petitioner.

WHEREFORE, Petitioner prays that the Board hear and determine this appeal and render judgment in accordance with the foregoing. Petitioner [51] prays for such other and further relief as may be deemed meet and proper in the premises.

THOMAS R. DEMPSEY,

A. CALDER MACKAY,

Attorneys for Petitioner,

1104 Pacific Mutual Building,

Los Angeles, California. [52]

State of California

County of Los Angeles.—ss.

Cecil B. deMille, being first duly sworn, deposes and says: That he is an officer, to-wit, President of CECIL B. deMILLE PRODUCTIONS, INC., the above named Petitioner, and makes this verification for and on behalf of said corporation, that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge, except the matters which are therein stated upon information and belief and that as to those matters he believes it to be true.

CECIL B. deMILLE (Signed)

Subscribed and sworn to before me this 8th day
of January, 1932.

[Seal]

GLADYS ROSSON (Signed)

Notary Public in and for said County and State.

My Commission Expires June 12, 1935. [53]

NP-2-26-28

“EXHIBIT A”.

Office of

Nov. 17, 1931

Commissioner of Internal Revenue

Washington, D. C.

IT:E:Aj

HR-13777-60D

Cecil B. DeMille Productions, Incorporated,

c/o A. Calder Mackay,

1104 Pacific Mutual Building,

Los Angeles, California.

Sirs:

You are advised that the determination of your tax liability for the years 1927 and 1928 discloses a deficiency of \$525,817.40 as shown in the statement attached.

In accordance with section 274 of the Revenue Act of 1926 and section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of

your tax liability for the years in which a deficiency is disclosed.

HOWEVER, IF YOU DO NOT DESIRE TO PETITION, you are requested to execute the enclosed agreement form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this agreement will expedite the closing of your returns by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the enclosed agreement, or on the date assessment is made, whichever is earlier; WHEREAS IF NO AGREEMENT IS FILED, interest will accumulate to the date of assessment of the deficiency.

Respectfully,

DAVID BURNET,

Commissioner.

By J. C. WILMER (Signed)

Deputy Commissioner.

Enclosures:

Statement

Form 882

Form 870

mh-3 [54]

STATEMENT.

IT:E:Aj

HR-13777-60D

In re: Cecil B. deMille Productions, Inc.,
c/o A. Calder Mackay,
1104 Pacific Mutual Building,
Los Angeles, California.

Year	Deficiency in Tax
1927	\$138,217.60
1928	387,599.80
	<hr/>
Total	\$525,817.40

Reference is made to the report of the revenue agent who examined your books of account and records; to your protest submitted to the internal revenue agent in charge at Los Angeles on February 13, 1931 and to the report covering conferences held in the office of that official.

After careful review and consideration the Bureau holds that the findings of the examining officer are correct.

Based on the evidence in the file in the case the Bureau holds that you are subject to the 50% tax under the provisions of section 220 of the Revenue Act of 1926 and section 104 of the Revenue Act of 1928.

1927

Net income reported on return		\$141,052.83
Add:		
1. Expense deductions treated as dividends paid	\$79,965.93	
2. Partnership income	790.31	
3. Capital expenditures	265.00	
4. Depreciation	5,294.18	86,315.42
Net income adjusted		\$227,368.25

EXPLANATION OF CHANGES.

1. This item represents the disallowance of certain claimed expenditures which are treated as distributions of profit to Mr. Cecil B. deMille. The same item is included in the returns for the years 1927 and 1928, and the following summary covers such disbursements for each of those years: [55]

	1927	1928
a. Mr. C. A. deMille	\$43,900.00	\$44,200.00
b. Residence	9,292.75	4,437.94
c. Yacht	21,371.26	22,197.28
d. Kitchen	2,571.92	2,707.04
e. Miscellaneous	2,830.00	6,094.75
Totals	\$79,965.93	\$79,637.01

Item (a) was reported as salary paid and is disallowed as not being paid for services rendered.

Items (b) and (c) represent excess "carrying charges" on Laughlin Park and Yacht "Seaward" and are treated as additional distribution of profit or dividends to Mr. Cecil B. deMille.

Items (d) and (e). Additional miscellaneous disbursements considered as distributions of profit to Mr. deMille.

2. Distributive income in real estate Trust #90, Bank of Italy, omitted from return.

3. "Organization cost" representing expenditures in connection with the increase in capital stock eliminated from the deduction claimed for miscellaneous expenses and treated as a capital expenditure.

4. Depreciation disallowed. The depreciation charged off on the following assets for the years 1927 and 1928, has been disallowed on account of the property not being used in taxpayer's trade or business in accordance with article 201, Regulations 74.

	1927	1928
Laughlin Park (Mr. deMille's residence)	\$5,294.18	\$5,298.90
Yacht "Seaward" (Mr. deMille's yacht)	—	2,629.84
	<hr/>	<hr/>
Totals	\$5,294.18	\$7,928.74

mh-3 [56]

COMPUTATION OF TAX.

Net income adjusted		\$227,368.25
Income tax at 13½%		30,694.71
Tax under section 220, Revenue Act of 1926:		
Net income	\$227,368.25	
Add: Dividends	25,761.79	
	<hr/>	
Taxable at 50%	\$253,130.04	\$126,565.02
		<hr/>
Total tax assessable		\$157,259.73
Tax previously assessed		19,042.13
		<hr/>
Deficiency in tax		\$138,217.60

1928

Net income reported on return filed		\$716,494.19
Add:		
1. Expense deductions treated as dividends paid	\$79,637.01	
2. Deduction for loss (worthless stock) disallowed	10,000.00	
3. Bad debts disallowed	6,147.46	
4. Depreciation disallowed	7,928.74	103,713.21
Total		<u>\$820,207.40</u>
Deduct:		
5. Profit on sale of capital assets reduced		83,462.75
Net income adjusted		<u>\$736,744.65</u>

EXPLANATION OF CHANGES.

1. Explained under Item 1 in 1927.

2. The deduction claimed on account of stock of the California Air Construction Company, Incorporated, being considered worthless and charged off as a loss at the end of 1928 has been disallowed, it is held that this stock was not worthless or the loss determinable at the close of the calendar year 1928.

mh-3 [57]

3. The following items included in the deduction for bad debts have been disallowed:

(a) California Air Construction Company	\$1,697.46
(b) Rudolph Berliner	4,450.00
Total	<u>\$6,147.46</u>

(a) Same explanation as for losses, Item 2 above.

(b) The charge-off of advances or loans made to R. Berliner during the period from September 30, 1921, to April 27, 1924, aggregating \$4,450.00 has been held to represent a forgiveness of indebtedness as no efforts to recover any portion of this indebtedness were made.

4. Depreciation adjustment explained under Item 4 in 1927.

5. Reduction in profit on sale of capital assets in the amount of \$83,462.75 results from an adjustment in cost computation of Pathe Exchange stock sold in 1928.

COMPUTATION OF TAX.

Net income adjusted		\$736,744.65
Income tax at 12%		88,409.36
Tax under section 104, Revenue Act of 1928:		
Net income	\$736,744.65	
Add: Dividends	33,594.82	
	<hr/>	
Taxable at 50%	\$770,339.47	\$385,169.74
		<hr/>
Total tax assessable		\$473,579.10
Tax previously assessed		85,979.30
		<hr/>
Deficiency in tax		\$387,599.80

Payment should not be made until a bill is received from the collector of internal revenue for your district and remittance should then be made to him.

mh-3.

[Endorsed]: Filed Jan. 12, 1932. [58]

[Title of Court and Cause—Docket No. 61290.]

ANSWER.

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Respondent admits that the notice of deficiency was mailed to the petitioner on November 17, 1931 and denies the remainder of paragraph 2 of the petition.

3. Admits the allegations contained in paragraph 2 of the petition.

4-(a) to (1) inclusive. Denies that the respondent erred as alleged in subparagraphs (a) to (1) inclusive of paragraph 4 of the petition.

5-(1) to (13) inclusive. Denies the matters set forth in subparagraphs (1) to (13) inclusive, of paragraph 5 of the petition.

Denies generally and specifically each and every material allegation contained in taxpayer's petition not hereinbefore specifically admitted, qualified or denied.

WHEREFORE it is prayed that the Board re-determine the amount of the deficiency involved in this proceeding to be equal to the amount determined by the Commissioner, plus any additional amount which may arise from the correction of any error or errors that may have been committed by the Commissioner. Claim is [59] hereby asserted for the increased deficiency, if any, resulting from such redetermination.

(Signed) C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.

Of Counsel:

A. H. FAST,
F. L. VAN HAAFTEN,
Special Attorneys,
Bureau of Internal Revenue.

[Endorsed]: Filed Feb. 24, 1932. [60]

[Title of Court and Cause—Docket No. 61290.]

AMENDMENT TO PETITION.

Comes now the Petitioner in the above entitled case and having first obtained leave of the Board files the following as an amendment to its petition heretofore filed herein:

Petitioner withdraws subparagraph 12-b under Paragraph V and substitutes the following in lieu thereof:

12-b. Petitioner alleges that it did not violate the provisions of Section 220 of the Revenue Act of 1926 and/or Section 104 of the Revenue Act of 1928 by retaining the earnings derived by it during either of the years 1927 and 1928, but in the event that this Board should sustain the Respondent in his determination that the provisions of Section 220 of the Revenue Act of 1926 and/or Section 104 of the Revenue Act of 1928 should apply to Petitioner, then Petitioner alleges that the provisions of Section 220 of the Revenue Act of 1926 and Section 104 of the Revenue Act of 1928 imposing the tax and/or obligation proposed in the said deficiency letter are so arbitrary and capricious as to amount to confiscation and thus offend the spirit and letter of the Fifth Amendment to the Constitution of the United States of America.

Petitioner further alleges that the provisions of Section 220 of the Revenue Act of 1926 and Section 104 of the Revenue Act of 1928 violate the Tenth Amendment to the Constitution of the United States in that said sections constitute attempts by Congress

under the guise of tax to exercise [61] power not delegated to the United States but one reserved to the States; that the regulation of the affairs of corporations which are chartered by States is reserved to State legislatures; and that all discretion on the declarations of dividends has been committed to boards of directors by the California Legislature and responsibility and liability therefor have been fixed upon them.

Petitioner further alleges that the provisions of Section 220 of the Revenue Act of 1926 and Section 104 of the Revenue Act of 1928 impose upon Petitioner an unconscionable tax or penalty and that neither the tax nor the penalty is warranted or authorized by the Sixteenth Amendment to the Constitution of the United States of America, nor is the tax or penalty authorized by any other provision of said Constitution; furthermore, the provisions of Section 220 of the Revenue Act of 1926 and Section 104 of the Revenue Act of 1928 are contrary to the general and implied provisions of the United States Constitution in that they impose a penalty upon one taxpayer for the failure of another taxpayer to pay taxes not imposed; Petitioner further alleges that the said sections violate the spirit of the Constitution and particularly the Eighth Amendment thereof in that the penalty or tax imposed is excessive, cruel and unusual. The Respondent erroneously and illegally failed and neglected to hold the provisions of Section 220 of

the Revenue Act of 1926 and Section 104 of the Revenue Act of 1928 unconstitutional and void.

THOMAS R. DEMPSEY,
A. CALDER MACKAY,
Attorneys for Petitioner,
1104 Pacific Mutual Building,
Los Angeles, California. [62]

State of California

County of Los Angeles.—ss.

CECIL B. deMILLE, being first duly sworn, deposes and says: That he is an officer, to wit, President of CECIL B. deMILLE PRODUCTIONS, INC., the above named Petitioner, and makes this verification for and on behalf of said corporation; that he has read the foregoing amendment to petition and knows the contents thereof and that the same is true of his own knowledge, except the matters which are therein stated upon information and belief and that as to those matters he believes it to be true.

CECIL B. deMILLE (Sgd.)

Subscribed and sworn to before me this 16th day of December, 1933.

CARTER DALY,
Authorized to administer oaths under the Revenue Act of 1926.

[Endorsed]: Filed at hearing, Dec. 16, 1933. [63]

[Title of Court and Cause—Docket Nos. 52996, 61290,
65123.]

STIPULATION.

It is stipulated that the net income determined by the respondent for each of the years 1924 to 1929, inclusive, as shown by the notices of deficiencies from which the above appeals are taken may be adjusted as follows:

Year 1924	
Net income per notice of deficiency	\$264,651.41
Deduct:	
Salaries:	
Constance A. deMille	\$24,700.00
Mrs. E. K. Adams	15,600.00
Julia Faye	13,000.00
	<hr/>
	\$53,300.00
Maintenance of Laughlin Park	9,924.16
Maintenance of Yacht	11,356.45
Miscellaneous expense	1,377.87
Depreciation buildings Laughlin Park	4,750.00
Depreciation Yacht	9,921.75
	<hr/>
	90,630.23
	<hr/>
Agreed net taxable income for 1924	\$174,021.18
Year 1925	
Net income per notice of deficiency	\$646,138.52
Deduct:	
Salaries	
	\$27,500.00
Maintenance, Laughlin Park	5,975.18
Maintenance, Yacht	13,647.62
Traveling expense	2,750.42
Kitchen expense	2,314.02
Depreciation, buildings, Laughlin Park	4,818.69

Br. fwd.		\$646,138.52
Deductions (contd.)		
Depreciation, yacht	\$ 9,921.75	
Income transferred from 1925 to 1928	116,850.00	183,777.68
	<hr/>	<hr/>
Agreed taxable net income for 1925		\$462,360.84
	Year 1926	
Net income per notice of deficiency		\$615,134.09
Deduct:		
Salaries	\$25,000.00	
Maintenance, Laughlin Park	5,695.77	
Maintenance, Yacht	25,481.89	
Horse expense and depreciation	2,179.28	
Kitchen expense	2,712.20	
Depreciation, buildings	4,874.50	
Depreciation, yacht	9,916.78	
Bad debts	500.00	76,360.42
	<hr/>	<hr/>
Agreed taxable net income for 1926		\$538,773.67
	Year 1927	
Net income per notice of deficiency		\$227,368.25
Deduct:		
Salaries	\$30,000.00	
Maintenance, Laughlin Park	9,292.75	
Maintenance, Yacht	16,028.45	
Kitchen expense	2,571.92	
Miscellaneous expense	1,830.00	
Depreciation	5,294.18	65,017.30
	<hr/>	<hr/>
Agreed taxable net income for 1927		\$162,350.95

Year 1928

Net income per notice of deficiency		\$736,744.65
Deduct:		
Salaries	\$30,000.00	
Maintenance, Laughlin Park	4,437.94	
Maintenance, Yacht	16,647.96	
Kitchen expense	2,707.04	
Miscellaneous expense	4,625.00	
Depreciation	7,928.74	
Loss, California Air Const. Co.	10,000.00	
Bad debts	6,147.46	82,494.14
		<u>\$654,250.51</u>
		[65]
Br. fwd.		\$654,250.51
Add:		
Additional profit sale of Pathe Exchange, Inc. stock	253,871.68	
Agreed taxable net income for 1928		<u>\$908,122.19</u>

Year 1929

Net income per notice of deficiency		\$136,445.98
Deduct:		
Salaries	\$30,000.00	
Maintenance, Laughlin Park	9,921.58	
Maintenance, Yacht	17,491.55	
Kitchen expense	2,428.50	
Horse expense	2,052.09	
Yacht taxes	388.00	
Depreciation	6,643.84	
Story prices	1,000.00	69,925.56
		<u>\$ 66,520.42</u>
Agreed taxable net income for 1929		\$ 66,520.42

.....
 Attorney for Petitioner

General Counsel, Bureau
 of Internal Revenue,
 Attorney for Respondent.

too
 12-19-33

[Endorsed]: Filed Dec. 20, 1933. [66]

[Title of Court and Cause.]

STIPULATION.

It is stipulated between counsel for the respective parties that the annexed sheets contain the detail of the stocks and bonds and investments of Cecil B. deMille in each of the years 1923 to 1929, inclusive (see pp. 418, 419 of Transcript of hearing). It is further stipulated that wherever the name "Cecil B. deMille Prods." appears in the attached statements the name of the petitioner Cecil B. deMille Productions, Inc., is meant.

A. CALDER MACKAY,

Attorney for Petitioner.

ROBERT H. JACKSON,

General Counsel,

Bureau of Internal Revenue,

Attorney for Respondent.

[Endorsed]: Filed Apr. 23, 1934.

[67]

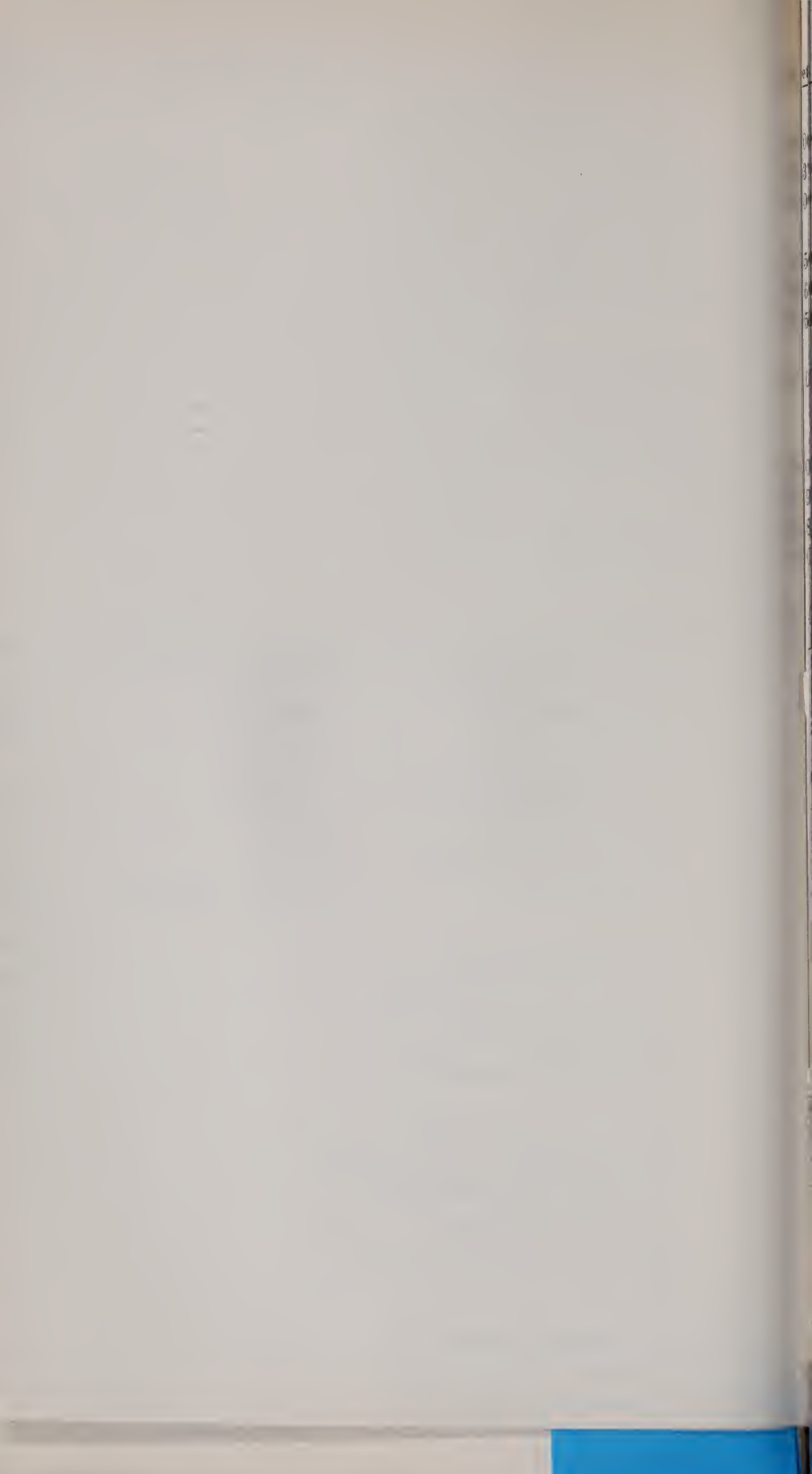
NOTES RECEIVABLE

Jackie Coogan Productions	3,145.00	1,945.00						
Edward Knoblock	5,000.00	10,000.00	4,550.00					
“ “	5,000.00							
“ “	5,000.00							
Cecil B. de Mille Prods. Inc.	25,000.00	45,000.00						
“ “	7,632.64							
Ellis Adams	550.00	550.00	550.00	550.00	550.00	550.00	550.00	83,000.00
Burwell Syndicate	5,520.00	5,520.00	5,520.00	5,520.00	5,520.00			200.00
S. A. Claggett	2,500.00	2,500.00	2,500.00	3,328.87				
Frank Hopkins	250.00	250.00	250.00			3,328.87	3,328.87	3,328.87
Bessie McGaffey	350.00							3,975.80
Motion Picture Directors Asso.	250.00							
Ethel A. Holms	250.00	200.00	60.00		40.00			
Mary Kelly	250.00	250.00						
Geo. Pezet	350.00							
E. O. Chandler	200.00	200.00						
— N. Clark	125.00	135.00	225.00					
— S. Webb	250.00							
— Lowe	30.00							
Frances Powers	50.00	50.00	50.00		50.00			
U. Yamabe	80.00	200.00						
Mrs. J. T. McClanney	22.10	22.10	22.10					
Lottie Cruz	35.00							
Edward Moore	77.50							
Rodney Doremus	25.00	61,942.24						
Boyd, Wm.		220.00	67,042.10	250.00				
Bell, G.				90.00				
—fee, C. P.				30.00				
George, Alice				75.00	7.02		7.02	
Leisen, J. M.				257.02				
Moran, Anthony				100.00				
Morris, Mark K.				100.00				
Overholt, Alma				100.00		100.00		
—, Harry				116.60		116.60		
—lace, Fred				150.00				
Wing, Ward				200.00				
Mofford, Maggie				38.50	15,234.22	26.83	9,739.32	
Burns, Roy								30.00
Carlton, Adele								50.00
Elter, Ameilka								1,092.50



	1923		1924		1925		1926		1927		1928		1929	
	Detail	Total	Detail	Total	Detail	Total	Detail	Total	Detail	Total	Detail	Total	Detail	Total
Notes Receivable—Cont'd.														
Kildare, Norma									250.00					
Lory, Zora									300.00					
Wyatt, W. T.									100.00	5,858.39				
Baker, F. D.											200.00			
Day, F. S.											150.00	4,228.87		
Beaton, Wilford														750.00
Elmer, Wm.														100.00
King, A. G.														200.00
McPherson, Jeanie														500.00
—Hey, Bessie														200.00
Murray, Jas.														521.92
—sevelt Irrig. Dist.														15,000.00
Rosson, Gladys														200.00
Adams, E. K.														200.00
														104,647.72
ACCOUNTS RECEIVABLE														
Jackie Coogan Prods.	7,500.00													
McCarthy, N. S.	36.48		36.48											
Jeanie MacPherson	5,079.73		4,205.23		5,305.23		250.00							
—ia Faye	1,606.78		908.78		986.62				231.27		1,981.27		1,981.27	
Charlotte Carter	312.50													
Wm. Sherer	250.00													
Mrs. C. B. de Mille	150.00													
Charles Hunter	25.00													
Gladys Rosson	10.00													
S. Fairbanks	5.00													
— Bell	90.00		90.00											
Lillian Bell	250.00		250.00		250.00									
Frances Harner	33.80													
Cora Spoor	1,741.52													
Georgia K. Devore	75.00													
Valeria Jones	200.00	17,365.81	200.00		200.00									
—er, Frances			215.80		215.80									
Moran, Anthony			100.00											
Morris, Mary			100.00											
Perline, H. O.			20.00											
Sherer, Wm.			250.00		250.00		225.00							
Stein, Selma			50.00		50.00					227.00				
Wing, Ward			200.00											
de Mille, Beatrice			1,548.95	8,175.24	16,531.49		16,561.49		16,532.41					
American Magnesium Corp.					5,500.00		5,500.00		5,500.00					
Hart, Mrs.					50.00									
Ponty, S. G.					25.00	29,364.14	125.00							
Delmates, Bruce							100.00							
Harris, Mildred							50.00							
Lory, Zora							300.00							
Murray, Adelaide							100.00							
Schenck, Wm.							100.00							
Zocsick, Oga							100.00							
Suspense					349.13		1,507.51	24,939.00	11.25		6,830.40		1,432.84	

	1923		1924		1925		1926		1927		1928		1929	
	Detail	Total	Detail	Total	Detail	Total	Detail	Total	Detail	Total	Detail	Total	Detail	Total
ACCOUNTS RECEIVABLE—CONT'D.														
DeMille, Cecelia									150.00		968.23		638.93	
Ellis, Geo.								40.00						
Elliotte-Horne								2,910.00		2,910.00		2,910.00		2,910.00
Mofford, Maggie								26.83						
Overholt, Alma								100.00		100.00		60.00		60.00
Umicker, Arthur								25.00	25,751.76	25.00	25.00	25.00		25.00
California Air Const.											53,150.00		53,150.00	
Flebbe, Geo.											82.50			
Lewis, Viola											70.00			
McBride, Gabe											272.50			
Benton, Eva											60.00	66,450.30	570.00	570.00
Grosbeck, Dan														200.00
—emp, A. N.														500.00 61,468.04
STOCKS														
1800 deMille Prods. Inc.	180,000.00	(2200 shs.) 182,500.00			182,500.00	(2900) 187,500.00			186,903.27		186,903.27		186,772.02	
5 Fed. Tr. & Svgs. Bk.	600.00													
10 Commercial Nat'l.	1,600.00	2,197.74			1,600.00	1,600.00		1,600.00						
10 Famous Players	788.75	788.75												
10 American Investigators	1,000.00													
1 Central Investment	100.00	100.00			100.00	100.00		100.00			100.00		100.00	
90 L. A. Speedway	9,000.00													
650 Aviation Securities	65,000.00													
5 Bank of Italy	1,125.00	259,213.75	1,125.00		1,125.00	13,630.24								
10 Al Maliekah Aud.		1,000.00	1,000.00		1,000.00	1,000.00		1,000.00		1,000.00		1,000.00		1,000.00
10 American Investigation		1,000.00	1,000.00		1,000.00	1,000.00		1,000.00						
5 Bank of America		675.00	675.00		675.00	640.00		640.00		6,352.78		4,200.00		4,200.00
20 Bancitaly		2,500.00	7,910.00		7,910.00	7,910.00		12,036.08						
100 Elias Katz Shoes Pfd.		5,000.00	196,886.49		5,000.00	5,000.00								
35 Americommercial Bk.					5,937.74									
800 Cinema Corp. of America Pfd.					20,000.00									
Denver Tramway Corp.					3,625.00									
50 Federal Building Co.					5,000.00									
1000 North American Theatres					11,250.00			11,250.00						
500 " " " Pfd.					—	246,722.74		—						
Equitable Insurance Co.								100.00		100.00				
Golden State Theatre & Realty Co.								10.00		10.00		10.00		10.00
Hollywood Hospital Co.								2,500.00		2,500.00		2,500.00		2,500.00
Vine St. Holding Corp.								13,100.00	245,340.24	13,675.07		13,840.26		13,840.26
Bank of Italy										18,645.24				
4287 Pathe Exchange								20,000.00	257,369.66		3,881.81		1,214.04	1,214.04
105 Int'l. Comb. Engine											10,825.00		11,325.00	11,325.00
100 Std. Oil of N. J.											3,972.50		3,972.50	3,972.50
Transamerica											29,918.57		17,562.20	17,562.20
100 White Sewing Machine Co.											5,422.50			
E. F. Hutton											123.77	264,602.92		
Bendix														3,270.00
Interoast Trading Co.														1,452.50
Lone Butte Farms														31.25
Salt River Valley Lands														2.00 244,751.77



	1923		1924		1925		1926		1927		1928		1929	
	Detail	Total	Detail	Total	Detail	Total	Detail	Total	Detail	Total	Detail	Total	Detail	Total
BONDS														
1M Salt Lake Terminal	1,000.00		1,000.00		1,000.00		1,000.00		1,000.00		1,000.00		1,000.00	
1M City of Tucson	1,037.80		1,037.80		1,037.80		1,037.80		1,037.80		1,037.80		1,037.80	
500 U. S. Liberty 1st	500.00		400.00		200.00		7,400.00		7,400.00		7,550.94		9,957.41	
300 " " 2nd	300.00		2,200.00		2,400.00		200.00		200.00					
750 " " 4th	750.00		850.00		850.00		850.00		850.00		850.00		1,003.92	
1M Little Rock Irrig. Co.	1,061.00		1,061.00		1,061.00		1,061.00		1,061.00		1,061.00		1,061.00	
1M Palmdale Irrig. Dist.	1,059.40	5,708.20	1,059.40		1,059.40		1,059.40		1,059.40		1,059.40		1,059.40	
100 Town of Chandler			100.00	7,708.20	100.00	7,708.20	100.00		100.00		100.00			
3M City of Holtville							2,910.00							
1M L. A. School							1,007.00		1,007.00		1,007.00		1,007.00	
2M L. A. Water							2,085.00		2,096.00		7,469.70		10,539.63	
1M S. F. City Hall							1,085.00		1,085.00		1,085.00		1,085.00	
5M L. A. Highway							5,000.00		5,000.00					
500 San Diego City							495.00							
1M Whittier School Dist.							1,049.00	26,339.20	1,049.00	22,744.80	1,049.00		1,049.00	
5M East Bay Municipal											5,470.49		5,470.49	
5M L. A. City Hall											5,270.37		5,270.37	
5M U. S. Treasury Cert.											4,996.49	38,907.19	5,000.00	
5M Roosevelt Irrig. Dist.													4,250.00	48,791.02
Miscellaneous Bonds														
Polish Govt. Bds.	325.00		325.00											
Budapest Mun. Bonds	100.00		100.00		100.00		100.00		100.00		100.00		100.00	
City of Warsaw	39.70	464.70	39.70		39.70									
U. S. of Brazil			255.00	719.70	255.00	394.70	255.00		255.00		255.00			
Midi R. R. of France							750.00		750.00		750.00		750.00	
Czecho-Slovak							520.00	1,625.00	520.00	1,625.00	520.00	1,625.00	520.00	1,370.00
SPECIAL VENTURES														
American Magnesium	5,500.00		5,500.00											
Burwell Syndicate	21,858.03	27,358.03	21,858.03	27,358.03	21,858.03		21,858.03							
Rowena Heights					6,250.00		3,750.00		3,985.56		4,308.10		5,194.92	
North Estate Sub. Div.													450.00	5,644.92
REAL ESTATE														
Argyle Ave.	5,500.00		5,500.00		5,500.00		5,573.57		5,573.57		5,573.57		5,573.57	
Argyle " Imps.	9,381.58		10,581.58		8,823.42		8,630.17		8,351.09		8,072.01		7,792.95	
North Estate Sub.	6,525.00		425.00											
" " " Lot	600.00		601.40		601.40		601.40		601.40		601.40		601.40	
Observatory Ave.	3,218.36		3,218.36		3,218.36									
Rowena Heights	16,250.00		15,000.00											
Highland Ave. 1/6 int.	9,499.99		9,499.99		8,712.49		39,198.10							
Sunset & Cahuenga	1,291.68		1,291.68		1,298.02		1,298.02		1,298.02		1,301.14		426.75	
Observatory	20,608.89		23,245.03		19,819.84		3,239.16		3,239.16		3,287.09		3,339.95	
Franklin Ave.	6,219.41	79,094.91	7,119.41		6,017.98		5,912.56		5,656.59		5,400.62		5,144.65	
Paradise	139,410.27	139,410.27	139,410.27		121,175.65		119,378.78		113,108.80		101,662.91		94,965.00	
Sonora Cabin			35.00		31.50		28.00		24.50		21.00		17.50	
Depreciation			220,632.59											
			7,500.00	213,132.59										
Hollywood Blvd.							35,077.68	218,937.44	35,077.68		35,077.68			
Encino									2,341.67	175,272.48	24,302.43	185,299.85	24,613.63	142,475.36



[Title of Court and Cause—Docket Nos. 52995, 52996, 61290, 61291, 65122, 65123, 71951, 71952.

Promulgated January 31, 1935.

1. Members of a partnership engaged in the business of producing motion pictures, all of its pictures having been made under contract for distributors, organized a corporation which took over the assets and continued the business of the partnership. A large part of the earnings, both of the partnership and its successor corporation, was withheld from distribution to firm members and stockholders, and was invested in various properties and enterprises and otherwise accumulated, in accordance with a consistent plan of the individuals (who were members of the partnership and, later, stockholders and officers of the corporation) to build up an organization, sufficiently financed, for the independent production of pictures. *Held*, the earnings were not accumulated beyond the reasonable needs of the corporation's business; the corporation was neither formed nor, during the years here before us, availed of for the purpose of preventing the imposition of surtaxes upon its stockholders, within the meaning of section 220, Revenue Acts of 1924 and 1926, and section 104, Revenue Act of 1928.

2. Where husband and wife, residents of California, orally agreed that wife's earnings and other income should remain her own, *held*, salaries received by her in compensation for her

services should not be included in income of her husband. Howard C. Hickman, 27 B. T. A. 807; *affd.*, 70 Fed. (2d) 985, followed.

A. Calder Mackay, Esq., for the petitioners.

M. B. Leming, Esq., R. J. Bopp, Esq., and J. H. Miller, Esq., for the respondent.

In these proceedings, which, upon motion, were consolidated, petitioners contest respondent's determinations of deficiencies in income taxes against Constance A. deMille, in the amount of \$758.50 for the year 1930; and against the other petitioners as follows: [73]

Year	Cecil B. deMille	
	Cecil B. deMille	Productions, Inc. ¹
1924	\$47,211.61	\$157,599.66
1925	16,845.75	363,605.62
1926	19,026.20	334,871.25
1927	32,656.67	138,217.60
1928	36,625.42	387,599.80
1929	13,126.29	104,423.60
1930	23,995.88
Total	\$189,487.82	\$1,486,317.53

¹The amounts of deficiencies as here set out, include for each of these years taxes under sec. 220, Revenue Acts of 1924 and 1926, and sec. 104, Revenue Act of 1928.

Beyond various minor changes made by respondent to incomes reflected by their returns filed for these several years, the deficiencies against petitioner Cecil B. deMille, and the corporation (as to

the corporation tax at the lower rates) result mainly from respondent's action in disallowing, as deductions from gross income of the corporation, substantial items, claimed as business expenses, and adding these amounts to deMille's individual income, as dividends received by him from the corporation. Included in such items were amounts paid by the corporation as salary to petitioner Constance A. deMille. The issues raised by the pleadings concerning the most of these numerous adjustments made by respondent have been settled by stipulations of the parties, filed within the time permitted therefor. We refer to them here, in explanation of the absence from our findings of any facts concerning these matters.

Respecting the corporate petitioner, the parties have stipulated the amounts of its net taxable income for each of the years here before us, and these are hereinafter set out. Respecting petitioner Cecil B. deMille, the parties agree as to the amount of his net taxable income for each of the years before us, except as to one item. The excepted item is the salary paid Constance A. deMille (wife of Cecil B. deMille) by the corporation petitioner. In 1924 it was \$24,700; in each 1925 and 1926, \$36,400; and in 1927 up to July 29, \$25,608.33. She filed separate returns for these years and reported these amounts. Respondent maintains these payments are taxable to petitioner under the community property laws of California. Petitioner contends that they are taxable to his wife in accordance with his agreement

with her. Which person is taxable is left for us to decide. It is agreed that if these salary payments are taxable to petitioner, they are to be taxed as ordinary income, and not as dividends.

Respecting petitioner Constance A. deMille, it is stipulated that there is due from her a deficiency in income tax for 1930 of \$953.17. An order will be entered accordingly.

Upon recomputation under Rule 50, effect will be given to these several stipulations, which dispose of all issues in these cases but two. [74] Of those issues for our decision the first has been mentioned; it concerns the salaries paid to Mrs. deMille. The second is, whether respondent was correct in imposing upon Cecil B. deMille Productions, Inc., a tax under the provisions of section 220, Revenue Acts of 1924 and 1926, and section 104, Revenue Act of 1928. The corporate petitioner assails this action as to every year here involved and, in addition, urges that the statutory provisions mentioned, and under which respondent has acted, are unconstitutional.

FINDINGS OF FACT.

Cecil B. deMille, a resident of Los Angeles, is an outstanding director and producer of motion pictures. Prior to 1913 he had been active in the theatrical business as an actor, playwright, and producer of shows on the legitimate stage. In that year he joined with Jesse L. Lasky, Samuel Goldwyn, and Arthur Friend, in organizing Lasky Feature Play Co. to engage in the production and exhibition of motion pictures. DeMille's duty in

the enterprise, upon which he entered immediately, was to produce the pictures. In this he was assisted to a considerable extent by his wife, petitioner Constance A. deMille, who was an actress, and experienced also in the varied managerial details incident to the staging of plays.

From a small beginning (its first film, "Squaw Man", was made in 1913 at a cost of about \$37,000) the Lasky Co. prospered and later merged with other pioneer motion picture concerns to form the Famous Players-Lasky Corporation (hereinafter called Famous Players). Of the enlarged company, deMille was made director general, his duties being, generally, the direction and production of the pictures. Thereafter, due in part to individual ambitions respecting control, difficulties developed within the organization. Goldwyn and Friend were forced out or left the company; so did Bosworth, who was originally interested in one of the merged concerns.

Because of the friction within the organization, and the departure of some of his original associates, deMille felt insecure in his position; feared that he might be ousted. Moreover, he resented, and considered himself hampered by, attempts made, both by fellow executives of the corporation and by representatives of the financial concerns furnishing money for the productions, to restrict his choice and control his judgment respecting types of pictures to be made and to interfere with his conduct of production operations. To assure himself protection, he desired to form an organization of his own, suf-

ficiently financed, so that it might produce pictures independently, freed from interference of the financiers, whether [75] banking interests or distributing companies, and reap the profits, undivided.

To this end, as early as 1918, he talked with various persons in Famous Players and other studios, whom he wished to take into his organization and, with Constance, discussed the matter with their personal attorney, McCarthy. Beyond discussion however, nothing was done in the matter until 1920. That year, by letter of August 14, deMille notified Famous Players-Lasky Corporation that he was terminating his agreements as its employee; that he was determined to realize his ambition to produce his own pictures with his own company; that he had organized a partnership through which to so do; and suggested that they make an arrangement whereby the pictures produced by the new organization might be distributed through Famous Players.

Upon McCarthy's advice, the new organization was a partnership, rather than, as contemplated by deMille, a corporation, and the articles were drawn under date of August 16, 1920. A total of \$25,000 cash was paid in; \$11,250 by Cecil, who had 45 percent interest, \$6,250 by Constance, who had 25 percent interest, \$5,000 by Ella King Adams, a relative by marriage, who had 20 percent interest, and \$2,500 by McCarthy, whose interest was 10 percent. The firm's name was Cecil B. deMille Productions; its purposes were to produce, exhibit, and otherwise deal in motion pictures; to deal in studios, stories, stage properties, and any other things incidental to

the production of pictures; to contract for services either for or by the partnership and to buy, sell, and deal generally in real estate and securities.

The agreement also outlined the duties of the several partners. Cecil was to choose the stories, plan and direct the productions; Constance was to be business manager; Ella Adams was to carry on research work, read and write stories and scenarios for the concern, and McCarthy was to handle its legal matters. The partners agreed that should any one of them withdraw, the others should have the right, (first right going to Cecil) to purchase his interest at the amount of his original investment in the firm. A short time later, in order to protect the firm from a sale of a partner's interest to outsiders, and to assure his control, Cecil obtained written options to similar effect from Adams and McCarthy.

By a separate instrument, deMille contracted to render his services as a director of motion pictures exclusively to the partnership for a term of five years at a salary of \$1,500 a week. He was given sole authority in the direction and production of pictures, including the right to select the stories, employ artists, and purchase materials and supplies. He undertook to complete not less than two, nor more than [76] four, pictures each year, so that the partnership might comply with an agreement it made contemporaneously with Famous Players, and was to have at his disposal all the facilities furnished by the latter under that contract. The partnership agreed to insist upon adequate advertising and publicity for the name of deMille in connection with any photoplay which it contracted to produce.

The contract between Famous Players, called the distributor, and the partnership, called the producer, was also dated August 16, 1920. It recited that deMille had previously been employed by Famous Players as a director; that Famous Players wanted more pictures directed by him; that the partnership had been formed to produce pictures directed by Cecil, and, continuing, contracted for the delivery to and acceptance by Famous Players of such productions. Famous Players agreed that the producer should make the pictures without interference and that it would furnish all facilities and artists necessary for the productions, and would pay all production costs. The pictures were to belong to Famous Players. For its services, the producer was to receive 30 percent of the net profits realized by the distributor from rentals of the film throughout the world. Against its share of the profits, the partnership was to be paid weekly advances of \$3,500 during the first month, \$4,500 during the second month, \$5,500 during the third month, and \$6,500 thereafter. It was guaranteed a return of \$200,000 upon each picture within two years after its release, unless these total guarantees should exceed the total profits from all the pictures. Famous Players was to remit weekly the costs of production as they were expended. The contract provided also for publicity for the name of deMille, and, further, for the withholding by Famous Players of \$1,000 a week from the advances in payment of Cecil's personal indebtedness to it of \$50,000.

By a separate contract of the same date between Famous Players and deMille individually, he guar-

anted the performance of the contract by the partnership, and undertook to carry it out should the firm fail so to do. The repayment of his individual indebtedness to Famous Players was also covered upon terms as above set out. Cecil agreed not to direct any pictures nor permit his name to be used in connection with any pictures, except those to be produced by the partnership and delivered to Famous Players under that contract. He agreed also to continue to serve as director general of Famous Players, without compensation beyond that paid him by the partnership.

So, under these arrangements, the partnership made pictures. It built up a staff of technical experts in all lines incident to the making of pictures, and maintained it continuously, though, of course, with [77] occasional changes in personnel. Although carried on the pay roll of Famous Players, the staff was a part of the firm's organization and subject to its control. By agreement, the partnership earnings were not distributed except through salaries (although the partners reported and paid tax on their respective shares) but were invested in various enterprises, and in real estate and securities. The concerted aim of the partners was to accumulate a fund—the figure they tentatively fixed was \$4,000,000—with which they might finance their own productions, without the necessity for making them under contract for others, or by borrowing money from distributors, which was the usual method by which independent producers financed their pictures at the time.

On June 10, 1922, the Cecil B. deMille Productions, Inc. (petitioner here), was organized under the laws of California by the members of the partnership. This company (hereinafter called Productions) was given by charter, broad powers, not only as to the production of motion pictures but also to deal in real estate, securities, and other property. It took over all the assets of the partnership (and assumed its liabilities), issuing in exchange therefor 4,000 shares of its capital stock to the partners in accordance with their partnership interests.

The net tangible assets thus acquired (all of which represented accumulated earnings of the partnership) totaled \$252,389.82, as follows:

Cash in banks.....	\$ 30,000.00	
Securities and Investments.....	54,519.86	
Automobiles	5,190.00	
Furniture and Fixtures.....	230.00	
Props	24,371.50	
Scenarios and Picture rights	10,000.01	
Loans receivable (of which deMille owed \$110,013.33)...	145,578.45	
		————— \$269,889.82
Accounts payable.....		17,500.00

The several contracts mentioned above, to which the partnership and deMille individually were parties, were taken over and continued in force by the new company (though whether by written assignment does not appear) and valued together with the good will of the old firm, at \$150,000. The technical staff was likewise taken over by the new company and continued in existence, subject to the com-

pany's control, throughout the years here before us, although its personnel, most of the time was carried on the pay rolls of concerns with which this company made contracts.

The possibility of tax avoidance by means of the corporation, or of avoidance of surtaxes upon the shareholders by permitting the [78] company's profits to accumulate, was neither mentioned nor discussed by any of the stockholders at the time this company was organized, nor at any time thereafter, until respondent began his investigation which culminated in issuance of the notices of deficiencies herein.

Productions continued to make pictures for Famous Players under the contract of August 16, 1920. There was considerable friction, chiefly over production costs, accounting methods, and division of the profits, which finally brought about the termination of the contract. It was succeeded by a new agreement between Famous Players and Productions dated November 16, 1923.

Respecting the production of the pictures, the direction thereof by deMille, the exclusive right to his services, publicity for his name, the furnishing of studio facilities, artists and money by Famous Players, the provisions of the old contract were, in the main, repeated in the new. The principal changes concerned the division of the earnings. On pictures made under the old contract, Productions' share was reduced to 20 percent of gross earnings up to a million dollars, and 25 percent above that amount. On pictures to be made under the new contract, Produc-

tions was to receive 15 percent of such earnings up to one million, and 25 percent above that amount. Against Productions' share, Famous Players was to advance \$6,731 weekly. It was agreed also that, in event of termination of the contract, Productions should receive all contracts and rights to the services of its staff, and of a specified number of artists.

Difficulties soon arose between the parties under this contract—again over production costs and attempted interference with deMille in his selection of stories and filming of the pictures. Within a year it was apparent that the friction would force cancellation of the contract, for both parties were dissatisfied.

Late in 1924, Productions' directors prepared to meet cancellation, expecting soon to be forced to finance their own pictures and, to that end, made efforts to restrict expenditures and conserve the company's funds. In addition, they investigated several studio properties with a view to purchase, and finally, after some delay over price, in January 1925, contracted to buy a studio owned by the Thomas H. Ince Corporation for \$500,000, of which \$50,000 was paid in cash or equivalent by April 23, 1925. In the meantime, deMille had undertaken negotiations with Famous Players, looking to a revision of the existing, or the making of a new contract. His efforts failed; the contract was terminated early in 1925, and he then was authorized by the directors to participate in the formation of a new distributing organization.

Meanwhile, McCarthy and his associates disagreed. Exercising his rights under the option originally

given to cover the partner- [79] ship's interest, deMille in April 1924, bought McCarthy's stock for \$2,500, and made a settlement of all his other claims for a total of \$20,000.

DeMille's negotiations, conducted chiefly with the Producers Distributing Co. of New York City about the time the Famous Players' contract was canceled, resulted in the organization of the Cinema Corporation of America, in which several concerns participated. The Cecil B. deMille Pictures Corporation was organized to take over the contract of purchase of the Ince studio; its stock was issued to Cinema; one half of Cinema's common stock was issued to Productions. The remaining Cinema stock was issued to W. W. Hodkinson Corporation (which owned Producers Distributing Corporation) in exchange for its stock. Productions and the Producers Distributing Corporation each paid \$50,000 into Cinema; and the Hodkinson Corporation undertook to furnish it additional funds (for which it was to receive Cinema's preferred stock) to meet production costs of pictures.

Under date of February 13, 1925, Productions and deMille individually entered into a contract with Cinema and the deMille Pictures Corporation. Cinema agreed to pay Cecil a salary of \$2,000 a week, to pay Productions \$4,500 a week for the release of his services; and to furnish funds for picture production. Cecil agreed to serve Cinema; he was made executive head of the business in California, and given complete authority in all matters pertaining to production, including the selection of

scenarios and artists. Upon termination of the contract his services were to revert to Productions, whose only benefit under the agreement was the right to receive payment for relinquishing deMille's services. The Pictures Corporation was to supply the studio, completely equipped.

Trouble started almost immediately under this contract. The concerns in New York failed to promptly advance the initial funds agreed upon to Cinema; Cinema failed to promptly advance picture expenses for Productions. On several occasions Productions had to guarantee the payment of the weekly studio pay rolls. Friction was more or less continuous. Cinema failed to acquire theatres to serve as outlets for pictures, as had been agreed upon (verbally) although Productions, on its part, had invested substantial sums in a western theatre chain and in another chain which it organized. Cinema's selling organization was not successful and, consequently, the income from picture rentals was insufficient to carry out the purpose for which the corporation was formed. As early as November 1925 a representative of Cinema stated that the company would not perform its contract; in 1926 it was apparent that the company was not capable of supplying money in the amounts needed for pic- [80] ture production. The contract was terminated early in 1927, but the picture "King of Kings" was thereafter delivered to Cinema under a separate contract of March 26, 1927.

In February 1925 (for reasons not disclosed by the record) deMille exercised his option and purchased the Productions stock owned by Ella King Adams for \$5,000, leaving one share standing in her name as nominee.

In the latter part of 1926 Productions began negotiations for a new connection, and under date of April 11, 1927, made a contract with Pathe Exchange, Inc., deMille, individually, and Pictures Corporation also joining as parties. In the main, it repeated the arrangements of prior contracts in which Productions had entered. For a consideration of \$5,000 weekly, Productions relinquished deMille's services, retaining the right to reclaim them upon termination of the contract. Cecil agreed to serve Pathe at a salary of \$2,500 a week. Pathe and the Pictures Corporation were to furnish a completely equipped studio, and supply funds for the making of pictures. A specified number of pictures were to be directed personally by deMille and a certain number of others were to be produced under his supervision. Cecil was given complete authority in matters pertaining to the production of pictures, but was limited in his employment of artists and selection of stories. He promised to withhold his name from any pictures except those produced under this contract, and publicity for his name in connection with such pictures was arranged. In connection with this contract, Productions exchanged its Cinema stock for Pathe stock.

The contract with Pathe was terminated by an agreement of April 18, 1928. Productions was paid \$50,000 cash; the respective rights of the parties as to claims, royalties, rights to services of artists, technical experts and other employees, use of deMille's name, insurance on his life, and other matters were adjusted. Shortly thereafter, Productions sold its Pathe stock at a profit of \$786,032.97.

In 1928, "sound" pictures were sufficiently perfected as to become marketable, and the motion picture industry was revolutionized. Studios and equipment became useless, and had to be rebuilt and replaced; the demand for artists, greatly changed, and new methods of production developed. Productions sustained a capital loss of \$20,000 on its properties; its royalties on silent pictures previously released were greatly curtailed, but it received the amounts guaranteed to it under its prior contracts.

Before the Pathe contract was terminated, Productions started negotiations with Metro-Goldwyn-Mayer Pictures Corporation (hereinafter called Metro) and entered into a contract with Metro on July 31, 1928. This contract was subject to cancellation upon 30 [81] days' notice at Metro's election, and deMille individually guaranteed compliance by Productions with its terms. It recites that the parties "desire to contract for the production of three feature photoplays to be personally directed by Cecil B. deMille." As in other contracts, Cecil's services were relinquished by Productions, and he undertook to give them to Metro; the use of his name

was granted to Metro, publicity for it arranged, and its use in connection with other pictures restricted during the term of the agreement. Cecil was given complete authority respecting the pictures, including the right to select the stories and casts. Productions was to receive a percentage of the income from each picture and, in addition, \$175,000 on each production costing a million dollars or more, and \$150,000 for each production costing \$750,000 or more, to be advanced in weekly payments of \$5,000. Metro was to furnish the money, and the facilities; was to take over or secure insurance on Cecil's life, and do the accounting. Metro also agreed to purchase Productions' obsolete "silent" equipment (from this arose the capital loss before mentioned). This contract remained in force during the remainder of the period here before us, but disputes, beginning within that period, mainly concerning Metro's attempts to restrict deMille in his choice of stories and types of productions, caused its termination in April 1931.

From the organization of Productions, throughout the time here material, deMille and his associates, as directors of the company, continued the aim and purpose they had pursued as partners, namely, to save the company's earnings, to accumulate a fund sufficient so that the company might be able to produce its own pictures. While the greater part of Productions' income was its share of picture profits received under its contracts, it dealt actively in securities, both listed and unlisted, and in real estate. It acquired a number of business properties which

it let; it bought a theatre or two; it purchased several ranch properties, some used for purposes of picture-making, others operated to some small extent for farming or fruit-growing. It sought to invest and lay aside all the money it could, and took interests in varied enterprises—Arizona cotton lands, oil development, a construction company, and others—some successful, some not. It made no pictures except under contracts, and into the production of such pictures it put no money of its own, the funds being supplied by the other parties to the contracts. Most of its picture profits were from productions personally directed by deMille, although some income came from about 30 pictures produced under his supervision.

Production's gross income during this period (subject to some corrections in order to accord with the net income agreed upon); its net [82] income as stipulated; its receipts under its contracts as picture profits (including weekly advances); the dividends paid to its stockholders; and its surplus at the end of each year, were as follows:

Year	Gross income	Net income	Picture profits	Dividends paid	Surplus
1924	\$ 396,582.81	\$174,021.18	\$351,629.00	\$ 4,000.00	\$ 309,366.66
1925	617,406.24	462,360.84	564,813.03	4,000.00	708,730.14
1926	705,788.91	538,773.67	621,086.06	40,000.00	1,136,129.30
1927	360,595.90	162,350.95	287,930.68	40,000.00	1,239,403.97
1928	1,057,081.21	908,122.19	418,224.72	256,000.00	1,568,477.56
1929	1418,842.70	66,520.42	431,258.09	48,000.00	1,606,515.33

¹Loss on security sales \$24,639.07.

²Also 100 percent stock dividend \$400,000.

Upon organization, Productions issued 4,000 shares of common stock ratably to the members of the predecessor partnership, a few shares being held by nominees. Changes followed deMille's purchase of McCarthy's stock in 1924, and Adams' stock in 1925. In 1927 the stock was held as follows: Cecil (president and director) 2,897 shares; Constance (vice president and director) 1,000 shares; Mrs. F. E. Calvin (deMille's daughter and a director) 100 shares; Gladys Rosson (secretary of company and director) 1 share; A. J. King (business manager and director) 1 share; Ella King Adams (director, researcher, writer) 1 share. By the stock dividend in 1928, these amounts were doubled, and thereafter, through 1929, the holdings remained without change.

The salary paid deMille by Productions fluctuated, being adjusted by the directors to meet the situation when he was paid directly by distributors, and when the cancellation of a contract seemed imminent, expenditures were reduced to conserve funds. Salaries were paid as follows:

Year	Cecil B. deMille	Constance A. deMille	John A. Fisher	A. J. King	Gladys Rosson
1924	\$ 78,000.00	\$24,700.00	\$5,200.00	—	—
1925	15,000.00	36,400.00	5,000.00	—	—
1926	6,166.66	36,400.00	—	—	—
1927	26,000.00	43,900.00	—	\$12,050.00	—
1928	110,583.33	44,200.00	—	15,600.00	\$6,529.17
1929	130,500.00	44,200.00	—	15,600.00	8,550.00

In 1924, Mrs. Adams was paid a salary of \$15,600; in 1925 the company dispensed with her services. Fisher, who had been with the partnership and con-

tinued with the corporation as general manager, was succeeded by King.

Likewise, deMille's indebtedness to Productions fluctuated. His indebtedness to the partnership (before mentioned), taken over by the corporation, was discharged by the transfer to the company of a [83] tract of about ten acres, in or near Los Angeles, known as Laughlin Park. The deMille residence, and, adjacent to it, the Productions' office building, which included a projection room, film vault, large library and museum, were on this tract. Since the transfer of the property deMille has paid rent of \$600 a month to Productions for the residence. Productions subdivided the property; sold ten lots at a substantial profit; has four unsold.

Cecil owed Productions as follows at the end of each year:

Year	Open account	Notes
1924 ¹	\$614.36	\$5,000.00
1925	1,710.07	10,000.00
1926	1,878.19	113,400.00
1927	credit (469.37)	65,400.00
1928	4,371.56	25,900.00
1929 ¹		10,900.00

¹In 1924, Productions owed deMille, upon note or mortgage, \$45,000; and in 1929, \$83,000. Productions' largest loan to deMille was made in October 1926, when, at his request the directors loaned him \$90,000. Repayment of this loan was completed subsequent to 1929.

Beyond his stock of Productions, deMille owned properties, both real and personal, of very substantial values; his personal assets were not taken over in toto by either the partnership or the corporation. So, also, with Constance deMille. Below are set out his net income each year and the income taxes heretofore paid by deMille and Productions.

Year	Net income, Cecil ¹	Taxes paid, Cecil	Taxes paid, Productions
1920		\$56,518.26	
1921		24,540.54	
1922		12,291.60	\$9,952.19
1923		6,881.55	21,183.18
1924	\$81,636.00	1,420.76	12,807.18
1925	123,075.83	16,172.05	52,081.03
1926	147,322.40	23,404.73	66,488.73
1927	137,781.60	25,287.03	19,042.13
1928	144,463.52	33,243.64	85,979.30
1929	168,204.17	31,119.73	5,420.37

¹ Amounts stated for 1924 to 1927, inclusive, are reduced by elimination of salary payments to Constance A. deMille. Amounts stated for 1928 and 1929, include dividends and capital net gains as stipulated. This statement does not supplant the stipulation filed by the parties, and is subject to correction to accord therewith.

The production cost of pictures made by petitioner under its several contracts greatly varied. The cost of the smaller pictures ran from \$200,000 to \$400,000. The so-called feature pictures cost from \$2,000,000 up to about \$5,000,000.

Cecil B. deMille Productions, Inc., was not formed, nor, during the years 1924 to 1929, inclusive, was it availed of for the purpose of preventing the imposition of surtaxes upon its shareholders through the medium of permitting its gains and profits to accumu- [84] late, instead of being divided or distributed. Nor, during this time, was the corporation a mere holding or investment company.

Cecil and Constance deMille were married in 1902. At that time she was on the stage; had earnings of her own. She and her husband agreed (orally, but never in writing) that her salary, other income and property should remain her own. That agreement was reiterated in 1923; "that our salaries were entirely separate and that our financial affairs were individual." Constance, during the years here under review, always had substantial properties in her own name, and received a substantial income, both from her salaries paid by Productions, and other sources. Her properties and income she has managed herself, without control or dominance of her husband.

During the existence of the partnership, and since the organization of Productions, she has been active in the management of the business. She has taken charge of the company's real estate, assisted in the negotiation of contracts, viewed plays and read stories in search for material for films, assisted in the planning and criticism of productions, and supervised the financial affairs of the company. No issue is raised concerning the reasonableness of the

compensation paid by Productions to her, to Cecil or to any other officer or employee.

OPINION.

GOODRICH: In view of the interpretative discussions as to the legislative history, and prohibitive purposes of section 220 of the Acts of 1924 and 1926, and section 104 of the Revenue Act of 1928³ (the material provisions of which are almost identical) contained in prior decisions of cases arising under these provisions,⁴ it is unnecessary to here attempt any further observations concerning the statute. Certainly, this case demands none for, as submitted, it requires us only [85] to answer these very definite

³ Sec. 220. (a) If any corporation, however created or organized, is formed or availed of for the purpose of preventing the imposition of the surtax upon its shareholders through the medium of permitting its gains and profits to accumulate instead of being divided or distributed, there shall be levied, collected, and paid for each taxable year upon the net income of such corporation a tax equal to 50 per centum of the amount thereof, which shall be in addition to the tax imposed by section 230 of this title and shall (except as provided in subdivision (d) of this section) be computed, collected, and paid upon the same basis and in the same manner and subject to the same provisions of law, including penalties, as that tax.

(b) The fact that any corporation is a mere holding or investment company, or that the gains or profits are permitted to accumulate beyond the reasonable needs of the business, shall be prima facie evidence of a purpose to escape the surtax.

[Subdivisions (c) and (d) here omitted.]

⁴ French Mortgage & Bond Co., 38 Fed. (2d) 841; United Business Corporation of America, 19 B. T.

questions of fact: Was this company organized, or was it used for the purpose of preventing the imposition of surtaxes on its stockholders; did it accumulate, rather than distribute its earnings, so that surtaxes might be avoided? There is, of course, considerable argument as to what may be the "reasonable needs" of the corporate petitioner's business, and whether its accumulations exceeded that measure but, after all, that line of inquiry leads but to a rebuttable presumption granted by the statute as an aid to enforcement. The extensive record in this case would not justify the resting of it upon a presumption; the deeper question must be answered.

Respondent makes a strong case supporting his action in laying a tax under these sections, and maintaining his position under petitioner's attack. But it is a case based upon circumstantial evidence. He points out that in the beginning, Cecil deMille, his wife and their associates, had little with which to do business beyond the intelligence, professional skill, and reputation of deMille as a DIRECTOR of motion pictures. He argues that the initial earnings of the partnership which preceded this company, and since then, the greater part of the income both of the partnership and the corporation were gar-

A. 809; *affd.*, 62 Fed. (2d) 754; certiorari denied, 290 U. S. 635; *Tway Coal Sales Co. v. United States*, 3 Fed. Supp. 668; *Williams Investment Co. v. United States*, 3 Fed. Supp. 224; *Keck Investment Co.*, 29 B. T. A. 143; *William C. deMille Productions, Inc.*, 30 B. T. A. 826 (on review, C. C. A., 9th Cir.).

nered because of Cecil's personal earning power, based upon his recognized talents as a DIRECTOR.

Respondent points out further that the creation of the partnership distributed (so far as taxability was concerned) amongst several people the salary theretofore earned by, and taxable alone to deMille, and that Cecil's taxes thus were reduced. (Of course, the partners were taxed on their distributable shares of the firm's earnings.) The formation of the partnership, he argues, marked the first step in carrying out a conceived avoidance scheme.

Continuing, he calls attention to the fact that the corporation, this petitioner, was organized, took over the assets and the business of the partnership, not long after the Revenue Act of 1921 had freed corporate incomes from the war-time levies laid upon them, so that the share of profits on pictures accruing to this group under the contracts could be received by a corporation subject to a lower tax than that levied upon individual recipients. That result, he argues, proves that the company was FORMED for purposes of avoidance. And as proof that it was AVAILED OF for that purpose thereafter, respondent deems sufficient the fact that a large part of the company's earnings were from year to year accumulated as investments in securities, in real estate, and in numerous varied enterprises, many of which had little or no relation to the motion picture business. [86]

There is weight to respondent's argument. The facts are that substantial earnings which, at least in the beginning arose mainly from the personal

talents and efforts of one man, were turned into a firm; that later, a corporation was formed, and those earnings, together with assets previously bought with prior accumulations of them, were transferred from the firm to the company; that this corporation, although it distributed substantial amounts as salaries, along with some dividends, withheld from distribution to its shareholders a large part of its income. And, of course, the shareholders have not paid the surtaxes for which they would have been liable had they received as dividends the amounts so withheld.

But the taxes under these statutory provisions are not imposed because of effects; avoidance per se is not prohibited. It is the PURPOSE, the intention motivating a course of conduct, which is made controlling by the very words of the statute. Unless the PURPOSE was to prevent the imposition of surtaxes, the tax may not be imposed. Admittedly, circumstances may evidence a purpose, and circumstances such as we find here, without a further showing, justify the finding of the prohibited purpose at which these provisions are aimed.

However, there is a further showing in this case—one which cannot be disregarded, and which outweighs the evidence of purpose presented by the circumstances. DeMille, McCarthy, and Fisher, all connected with the first organization, the partnership, all having to do with the formation of the corporation, all serving thereafter as directors of the company (McCarthy until 1924; Fisher until 1926) testified. Under oath, each flatly denied that the company was formed for the purpose of pre-

venting the imposition of surtax upon its shareholders; or that it was availed of, or accumulated its profits for that purpose. They denied that the matter of tax avoidance by the shareholders was ever discussed, or that the possibility of such avoidance was ever a consideration in determining the disposition of the company's earnings. These denials remain unshaken by cross-examination. Of course, such denials are not entirely controlling. Perhaps they are to be expected, for without them there would be no controversy.

But the proof here goes well beyond mere denial of prohibited intent. It shows affirmatively a plan necessitating the accumulation of earnings and the end to which they might ultimately be used. The witnesses testified fully as to the purpose for which the company was formed—to create an organization for the independent production of pictures—and as to their purpose in accumulating, rather than distributing its earnings, and building a surplus—to enable that organization to finance its own productions. [87]

There is extensive evidence concerning the needs of the business, the necessity for a large surplus to meet the cost of its own productions in event of cancellation of the company's contracts, and concerning the friction and disputes which pointed to imminent cancellation, against which the only protection was that independence assured by an ample reserve. The testimony concerning the purpose for which the corporation was formed and the purpose for which its surplus was accumulated is corroborated by the

minutes of the meetings of the directors of the company—the contemporaneous record reflecting the company's activities and the reasons therefor.

We are not ready to disregard this testimony or to say that the recorded thoughts of the company's guiding heads, the writing of which was begun more than a decade ago, was artfully drawn for self-service against the future day of trial. Those denials of wrongful intent, those declarations of a purpose other than the avoidance of taxes in the building of a surplus, we believe, as against the evidence of circumstance from which might be drawn inferences to opposite effect.

Nor are we ready to say that the plans for the company and the purpose for which its surplus was accumulated were too far-fetched to be within the limits of reasonable business ambition. From the record it is apparent that the company, when producing under contracts for others, was beset with controversies and difficulties and frequently, if not constantly, endangered by the possibility of cancellation of its contracts. The desire and determination of the stockholders to advance the activities of their company from those of a producer under contracts, to those of an independent producer, financed sufficiently to insure the making and marketing of its own pictures, seem not unreasonable.

Whether the money necessary to the realization of that determination is raised upon loans, by sale of stock, or by conservation of earnings seems immaterial, so long as the last plan does not result in an accumulation of profits unreasonable to the needs

of the business. In view of the evidence as to the costs of picture production, and as to the marketing hazards of the business which involve the risk that the talent and taste of the producer may not satisfy the public fancy, we cannot say that the surplus accumulated by this corporate petitioner was beyond that necessary to its ends. Consequently, for these reasons, we have made our finding, and hold that respondent erred in imposing upon petitioner the taxes provided by these sections of the statutes.

Because of divergence of facts—and each case involving this issue must bottom on its own facts—the prior decisions cited give little [88] support to respondent's determination. In some of the cases, the principal shareholders transferred to the corporations substantial amounts of income-producing properties, permitting the corporations thereafter to receive and accumulate those revenues, and thus immediately reducing their individual incomes and the taxes thereon. Not so here. Neither Cecil nor Constance deMille stripped themselves of assets. On the contrary, each owned substantial properties beyond their stock of petitioner, and each individually received the income therefrom.

In other cases, the controlling stockholders enjoyed the profits of the corporations by means of large loans to themselves, which they did not repay. Again, not so here. Constance deMille borrowed nothing from petitioner; Cecil ran a small open account which in 1927 was overpaid, and in addition borrowed on note. His initial indebtedness to the company was discharged by the transfer of real

estate. In 1924, the company owed deMille a net amount of \$40,000. In 1925, Cecil owed it \$10,000. The largest loan made him was in 1926—\$90,000 at one time, and in the same year about \$13,000 more. By the end of the next year he had repaid \$48,000; in 1928 he repaid about \$40,000 more, and in the next year petitioner owed him about \$72,000.

We cannot but comment upon the attempt made by petitioner on brief to take much of our time with criticisms of the design and effect of the statutory provisions here involved. Such efforts are wasted. The laws are enacted by the Congress, not by us, and “arguments as to expediency, or of economic mistake or wrong in taxation” are here immaterial and have no place. *Brushaber v. Union Pacific R. R. Co.*, 240 U. S. 1. Our sole duty is to see to it that the mandates of the statutes are followed in the cases brought to us for decision. As to petitioner’s contentions respecting the unconstitutionality of the statute, these heretofore have been decided adversely.

Since Cecil and Constance deMille agreed, prior to 1924, that compensation for her personal services should be her separate income, respondent erred in including in Cecil’s income for the years 1924 to 1927, inclusive, the salaries paid Constance by Productions. *Howard C. Hickman*, 27 B. T. A. 807; 70 Fed. (2d) 985.

Reviewed by the Board.

Judgment will be entered under Rule 50.

McMAHON, dissenting: It appears from the findings of fact that, from the organization of Cecil B. deMille Productions, Inc., through [89] the years before us, deMille and his associates adhered to the "purpose, which they had pursued as partners, namely, to save the company's earnings, to accumulate a fund sufficient so that the company might be able to produce its own pictures"; that "the usual method by which independent producers financed their pictures at that time" was by "borrowing money from distributors"; that "its personnel most of the time was carried on the payrolls of concerns with which his company made contracts"; that "it made no pictures except under contracts, and into the productions of such pictures it put no money of its own, the funds being supplied by the other parties to the contracts. Most of its picture profits were from productions personally directed by deMille, although some income came from about 30 pictures produced under his supervision"; and that "while the greater part of Productions' income was its share of picture profits received under its contracts, it dealt actively in securities, both listed and unlisted, and in real estate. It acquired a number of business properties which it let; it bought a theatre or two; it purchased several ranch properties, some used for the purposes of picture-making, others operated to some small extent for farming or fruit-growing. It sought to invest and lay aside all the money it could, and took interests in varied enterprises—Arizona cotton lands, oil development, a construction company, and others—some successful, and some not."

There is no showing that the accumulation of "the gains or profits" in question here was within "the reasonable needs of the business" activities of the corporation, numerous and diverse, as actually engaged in during the years before us; most of those business activities, all but one or two at best, were not germane to the production by it of pictures for others under contracts; and none of the other activities were essential to such production. In construing and applying the statute we are concerned with "the business", not a business, which was actually carried on; and in the last analysis the vital question here presented, in this respect, is as to whether its accumulation of "gains or profits" in order that it "might be able to produce its own pictures" in the future, which it had never done, instead of producing pictures for others under contract as it had always done, is within or "beyond the reasonable needs of the business" of the corporation as thus carried on. If it is beyond such "reasonable needs", then the respondent made out a prima facie case under the same subsection of the statute which is applicable and there arises another question as to whether petitioner has overcome the prima facie case made out by respondent.

In my opinion, as to the petitioner, Cecil B. deMille Productions, Inc., the facts establish "that the gains or profits" were permitted "to accumulate beyond the reasonable needs of the business", within [90] the meaning of section 220 of the Revenue Acts of 1924 and 1926, and section 104 of the Revenue Act of 1928, applicable here. The words "the busi-

ness" as there used mean the business as actually carried on at the time in question. These words do not mean business which the corporation is authorized to do but has not done. They do not mean business which the corporation merely wishes to do or even contemplates doing at some future time. They do not mean wholly new business or a wholly new phase of an old business which has never been actually engaged in. They do not mean a type of business activity which has never been engaged in by the corporation but which may or may not be engaged in at some future time so that an effort may be made to realize the personal ambition of a stockholder, however laudable, even though he be the moving spirit and genius of the corporation. They do not permit saving up money or accumulating surplus to be used at some future time in an effort to satisfy such ambition. The statute deals with the realities of "the business", as actually carried on, not with the hopes or aspirations of its stockholders. Any other construction of the statute would be unreasonable and beyond the ordinary meaning of its language. In the instant proceeding it affirmatively appears that the surplus in question was not necessary and was not accumulated to enable the corporation to carry on its business as carried on in the years before us, but it was "permitted to accumulate" to enable the corporation to do something different than was done in the years in question. During those years it did not produce pictures; it rendered services, personal in character, to others who did produce pictures; and it desired, thereafter, to

produce its own pictures, something quite different from merely rendering services to others who did produce pictures. This contemplated a departure from carrying on its business as it had been carried on in the years in question. Such accumulation is "beyond the reasonable needs of the business" within the meaning of the statute. Hence, we have here, under the same subsection of these statutes, "prima facie evidence of a purpose to escape the surtax."

In my view this prima facie case made by the respondent has not been overcome. I appreciate that there is a finding of fact that "Cecil B. deMille Productions, Inc., was not formed, nor, during the years 1924 to 1929, inclusive, was it availed of for the purposes of preventing the imposition of surtaxes upon its shareholders through the medium of permitting its gains and profits to accumulate, instead of being divided or distributed"; and that it is in effect stated in the opinion that the witnesses testified that the purpose in accumulating the earnings of the corporation and building a surplus was "to enable that organization to finance its own productions"; [91] but the majority opinion, in effect, holds, and in my opinion erroneously, that its "gains or profits" were "not permitted to accumulate beyond the reasonable needs of the business." I am unable to conclude that such finding would have been made if the majority had proceeded upon the theory that the corporation's "gains or profits" were "permitted to accumulate beyond the reasonable needs of the business." On the contrary, the

inescapable inference to be drawn is that the error of the Board in this respect induced the conclusion of fact which is reflected by the finding as made. Accepting the premise that the facts establish a prima facie case for the respondent, and taking into consideration the entire record, there is, in my opinion, no adequate basis for the majority's finding or conclusion to the effect that the corporation, during the years 1924 to 1929, inclusive, was not availed of for the purpose of preventing the imposition of the surtax upon "its shareholders through the medium of permitting its gains and profits to accumulate instead of being divided or distributed." Subsection (a) and (b) of section 220, *supra*.

Respondent has not only made out a prima facie case under the statute, but there is other evidence, some of which is circumstantial, which tends strongly to support his determination in this respect. Circumstantial evidence is often more convincing than categorical denials of purpose made long after the events occur, and so it is here. The majority opinion states that "of course, such denials are not entirely controlling. Perhaps they are to be expected, for without them there would be no controversy." The majority opinion does point out at full value in considerable detail many of the strong elements of the proof which tends to support respondent's contention. It is not necessary to impute perjury to any witness in reaching the conclusion which I have reached and I do not do so. To the extent that their denials are, in effect, conclusions of fact, which we must form from all of the

proof bearing upon the subject of purpose, they are not binding upon us. There is other proof upon the subject which is inconsistent with such conclusions of the witnesses. The only material result of consequence accomplished during the years before us by the accumulations in question is that each stockholder of the corporation has been enabled to "escape the surtax" in question; this result followed inevitably from what was done. It is elementary that intent, which is synonymous with purpose, is to be inferred from acts or conduct; and that it is presumed that the natural and necessary or probable consequences of acts, intentionally performed, are intended. It is apparent that the accumulations of surplus in question were accomplished with a high degree of intelligence on the part of those responsible for them. Of course, accumulations of surplus for a purpose which carried them "beyond the reasonable [92] needs of the business", such as we have here as pointed out herein, which is the very thing, in view of the statute, which establishes the prima facie case made out by the respondent, can not serve to overcome such prima facie case; they are "prima facie evidence of a purpose to escape the surtax."

As heretofore pointed out herein, there are findings that "the usual method by which independent producers financed their pictures at that time", was by "borrowing money from distributors"; and that "its personnel, most of the time was carried on the pay rolls of concerns with which this company made contracts." There is no showing that either of these

methods cannot be adopted when, as and if the corporation actually engages in producing its own pictures independently, instead of producing pictures for others. The corporation, with deMille dominating it as he did, was apparently quite resourceful in financing all of its activities without disturbing any of the surplus in question here.

In my opinion the prima facie case made out by the respondent, coupled with the proof which supports his contentions, has not been overcome by the proof which tends to support the contentions of the petitioners upon the subjects of the "reasonable" financial needs of "the business" of the corporation, or its purposes or those of its stockholders "to escape the surtax"; and, for the reasons herein set forth, I cannot agree with the majority in so far as they hold that any of the "additional" taxes in question herein, as specified in subsection (a) of section 220, supra, applicable here, are not to be imposed.

SMITH and ADAMS agree with this dissent.

[Seal.] [93]

[Title of Court and Cause.]

MOTION FOR DECISION UNDER RULE 50.

Now comes the Petitioner by its attorneys, Thomas R. Dempsey and A. Calder Mackay, and

Moves the Board to enter an order redetermining the income tax liability of the Petitioner for the years 1924, 1925, 1926, 1927, 1928 and 1929 in accordance with the decision of the Board promul-

gated January 31, 1935, and as set forth in the statement attached hereto.

This proposed redetermination is submitted in accordance with the decision of the Board.

THOMAS R. DEMPSEY

A. CALDER MACKAY

Attorneys for Petitioner,
1104 Pacific Mutual Building,
Los Angeles, California [94]

STATEMENT.

In re: Cecil B. deMille Productions, Inc.
Los Angeles, California.

Years 1924,

1925 Docket No. 52996

1926

Years 1927 Docket No. 61290

1928

Year 1929 Docket No. 65123

INCOME TAX LIABILITY.

Years	Tax Liability	Tax Assessed	Deficiency
1924	\$ 21,752.65	\$ 12,807.18	\$ 8,945.47
1925	60,106.90	52,081.03	8,025.87
1926	72,734.44	66,488.73	6,245.71
1927	21,917.37	19,042.13	2,875.24
1928	108,974.66	85,979.30	22,995.36
1929	7,317.24	5,420.37	1,896.87
Totals	\$292,803.26	\$241,818.74	\$50,984.52

1924

Net income per deficiency letter		\$264,651.41
Deduct:		
Salaries:		
Constance A. deMille	\$24,700.00	
Mrs. E. K. Adams	15,600.00	
Julia Faye	13,000.00	
	<hr/>	
		\$53,300.00
Maintenance of Laughlin Park	9,924.16	
Maintenance of Yacht	11,356.45	
Miscellaneous expense	1,377.87	
Depreciation buildings Laughlin Park	4,750.00	
Depreciation Yacht	9,921.75	90,630.23
	<hr/>	
Agreed net taxable income for 1924		\$174,021.18
Tax liability 12½%	\$21,752.65	
Tax previously assessed	12,807.18	
	<hr/>	
Deficiency in tax		\$8,945.47
		[95]

1925

Net income per deficiency letter		\$646,138.52
Deduct:		
Salaries	\$27,500.00	
Maintenance, Laughlin Park	5,975.18	
Maintenance, Yacht	13,647.62	
Traveling expense	2,750.42	
Kitchen expense	2,314.02	
Depreciation, buildings, Laughlin Park	4,818.69	
Depreciation, yacht	9,921.75	
Income transferred from 1925 to 1928	116,850.00	183,777.68
	<hr/>	
Agreed net taxable income for 1925		\$462,360.84
Tax liability 13%	\$60,106.90	
Tax previously assessed	52,081.03	
	<hr/>	
Deficiency in tax		\$8,025.87

		1926	
Net income per deficiency letter			\$615,134.09
Deduct :			
Salaries	\$25,000.00		
Maintenance, Laughlin Park	5,695.77		
Maintenance, Yacht	25,481.89		
Horse expense and depre- ciation	2,179.28		
Kitchen expense	2,712.20		
Depreciation, buildings	4,874.50		
Depreciation, yacht	9,916.78		
Bad debts	500.00		76,360.42
Agreed net taxable income for 1926			\$538,773.67
Tax liability 13½%		\$72,734.44	
Tax previously assessed		66,488.73	
Deficiency in tax			\$6,245.71
		1927	
Net income per deficiency letter			\$227,368.25
Deduct :			
Salaries	\$30,000.00		
Maintenance, Laughlin Park	9,292.75		
Maintenance, Yacht	16,028.45		
Kitchen expense	2,571.92		
Miscellaneous expense	1,830.00		
Depreciation	5,294.18		65,017.30
			[96]
Agreed net taxable income for 1927			\$162,350.95
Tax liability 13½%		\$21,917.37	
Tax previously assessed		19,042.13	
Deficiency in tax			\$2,875.24

Year 1928

Net income per deficiency letter		\$736,744.65
Deduct:		
Salaries	\$30,000.00	
Maintenance, Laughlin Park	4,437.94	
Maintenance, Yacht	16,647.96	
Kitchen expense	2,707.04	
Miscellaneous expense	4,625.00	
Depreciation	7,928.74	
Loss, California Air Const. Co.	10,000.00	
Bad debts	6,147.46	82,494.14
		<u>\$654,250.51</u>
Add:		
Additional profit sale of Pathe Exchange, Inc., stock		<u>253,871.68</u>
Agreed net taxable income for 1928		<u>\$908,122.19</u>
Tax liability 12%	\$108,974.66	
Tax previously assessed	<u>85,979.30</u>	
Deficiency in tax		\$22,995.36

Year 1929

Net income per deficiency letter		\$136,445.98
Deduct:		
Salaries	\$30,000.00	
Maintenance, Laughlin Park	9,921.58	
Maintenance, Yacht	17,491.55	
Kitchen expense	2,428.50	
Horse expense	2,052.09	
Yacht taxes	388.00	
Depreciation	6,643.84	
Story prices	1,000.00	69,925.56
Agreed net taxable income for 1929		<u>\$66,520.42</u>
Tax liability 11%	\$7,317.24	
Tax previously assessed	<u>5,420.37</u>	
Deficiency in tax		\$1,896.87

[Endorsed]: Filed Mar. 11, 1935. [97]

[Title of Court and Cause.]

NOTICE OF SETTLEMENT.

The attached proposed determination of deficiency under the opinion of the United States Board of Tax Appeals decided January 31, 1935, will be presented the Board for settlement on the

This notice of proposed determination is submitted in accordance with the decision of the Board without prejudice to the Commissioner's right to contest the correctness of the decision pursuant to the statute in such cases made and provided.

(Signed) ROBERT H. JACKSON

Assistant General Counsel

for the

Bureau of Internal Revenue.

Of Counsel:

MASON B. LEMING,

Special Attorney,

Bureau of Internal Revenue.

tco

3-18-35 [98]

STATEMENT OF RECOMPUTATION

IT:AR:BTA-Recomp.

EJF

In re: Cecil B. deMille Productions,
 Incorporated,
 Los Angeles, California.

B.T.A. Docket: #52996

INCOME TAX LIABILITY.

Years	Income Tax Liability	Income Tax Assessed	Deficiency
1924	\$ 21,752.65	\$ 12,807.18	\$ 8,945.47
1925	60,106.91	52,081.03	8,025.88
1926	72,734.45	66,488.73	6,245.72
	<hr/>	<hr/>	<hr/>
Totals	\$154,594.01	\$131,376.94	\$23,217.07

The United States Board of Tax Appeals, in its decision promulgated January 31, 1935, holds that the petitioner is not subject to tax under the provisions of section 220 of the Revenue Acts of 1924 and 1926.

1924

NET INCOME

Net income as reported in the sixty-day letter dated December 29, 1930		\$264,651.41
Deduct:		
Adjustments to reflect the net income agreed upon and indicated in the Board's decision.		
1. Salaries	\$53,300.00	
2. Expenses—maintenance of Laughlin Park	9,924.16	
3. Yacht maintenance	11,356.45	
4. Miscellaneous expenses	1,377.87	
5. Depreciation on buildings	4,750.00	
6. Depreciation on yacht	9,921.75	
		<hr/> 90,630.23
Net income as adjusted		<hr/> \$174,021.18

COMPUTATION OF TAX.

Net income as adjusted	\$174,021.18
Amount subject to tax	174,021.18
Income tax at 12½%	21,752.65
Previously assessed	12,807.18
Deficiency in tax	8,945.47
EJF/NK [99]	

1925

NET INCOME.

Net income as reported in the sixty-day letter dated December 29, 1930		\$646,136.52
Deduct:		
Adjustments to reflect the net income agreed upon and indicated in the Board's decision.		
1. Salaries	\$27,500.00	
2. Laughlin Park maintenance	5,975.18	
3. Yacht maintenance	13,647.62	
4. Miscellaneous expense	2,750.42	
5. Kitchen expense	2,314.02	
6. Depreciation on building	4,818.69	
7. Depreciation on yacht	9,921.75	
8. Profit on stock sold	116,850.00	183,777.68
		<hr/> 183,777.68
Net income as adjusted		<hr/> \$462,360.84

COMPUTATION OF TAX.

Net income as adjusted	\$462,360.84
Amount subject to tax	462,360.84
Income tax at 13%	60,106.91
Previously assessed	52,081.03
	<hr/>
Deficiency in tax	\$ 8,025.88

1926

NET INCOME.

Net income as reported in the sixty-day letter dated December 29, 1930	\$615,134.09
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Deduct:

Adjustments to reflect the net income agreed upon and indicated in the Board's decision.

1. Salaries	\$25,000.00	
2. Laughlin Park maintenance	5,695.77	
3. Yacht maintenance	25,481.89	
4. Miscellaneous expense	2,179.28	
5. Kitchen expense	2,712.20	
6. Depreciation on building	4,874.50	
7. Depreciation on yacht	9,916.78	
8. Bad debts	500.00	76,360.42
	<hr/>	<hr/>

Net income as adjusted	\$538,773.67
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EJF/NK [100]

COMPUTATION OF TAX.

Net income as adjusted	\$538,773.67
Amount subject to tax	538,773.67
Income tax at 13½%	72,734.45
Previously assessed	66,488.73
	<hr/>
Deficiency in tax	\$ 6,245.72

EJF/NK

[Endorsed]: Filed Mar. 19, 1935. [101]

[Title of Court and Cause.]

NOTICE OF SETTLEMENT.

The attached proposed determination of deficiency under the opinion of the United States Board of Tax Appeals decided January 31, 1935, will be presented to the Board for settlement on the

This notice of proposed determination is submitted in accordance with the decision of the Board without prejudice to the Commissioner's right to contest the correctness of the decision pursuant to the statute in such cases made and provided.

(Signed) ROBERT H. JACKSON

Assistant General Counsel

for the

Bureau of Internal Revenue.

Of Counsel:

MASON B. LEMING,

Special Attorney,

Bureau of Internal Revenue.

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3-18-35 [102]

STATEMENT OF RECOMPUTATION.

IT:AR:BTA-Recomp.

EJF

In re: Cecil B. deMille Productions,
 Incorporated,
 Los Angeles, California.

B.T.A. Docket: #65123

INCOME TAX LIABILITY.

Year—1929.

Income Tax Liability—\$7,317.25.

Income Tax Assessed—\$5,420.37.

Deficiency—\$1,896.88.

The United States Board of Tax Appeals, in its decision promulgated January 31, 1935, holds that the petitioner is not subject to tax under the provisions of section 104 of the Revenue Act of 1928.

NET INCOME

Net income as reported in the sixty-day letter dated March 1, 1932		\$136,445.98
Deduct:		
Adjustments to reflect the net income agreed upon and indicated in the Board's decision.		
1. Salaries	\$30,000.00	
2. Laughlin Park maintenance	9,921.58	
3. Yacht maintenance	17,491.55	
4. Kitchen expense	2,428.50	
5. Horse expense	2,052.09	
6. Yacht taxes	388.00	
7. Depreciation	6,643.84	
8. Story prizes	1,000.00	69,925.56
		<hr/>
Net income as adjusted		\$ 66,520.42

COMPUTATION OF TAX.

Net income as adjusted	\$ 66,520.42
Amount subject to tax	66,520.42
Income tax at 11%	7,317.25
Previously assessed	5,420.37
	<hr/>
Deficiency in tax	\$ 1,896.88

EJF/NK

[Endorsed]: Filed Mar. 19, 1935. [103]

[Title of Court and Cause.]

NOTICE OF SETTLEMENT.

The attached proposed determination of deficiency under the opinion of the United States Board of Tax Appeals decided January 31, 1935, will be presented to the Board for settlement on the

This notice of proposed determination is submitted in accordance with the decision of the Board without prejudice to the Commissioner's right to contest the correctness of the decision pursuant to the statute in such cases made and provided.

(Signed) ROBERT H. JACKSON

Assistant General Counsel

for the

Bureau of Internal Revenue.

Of Counsel:

MASON B. LEMING,

Special Attorney,

Bureau of Internal Revenue.

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3-18-35 [104]

STATEMENT OF RECOMPUTATION.

IT:AR:BTA-Recomp.

EJF

In re: Cecil B. deMille Productions,
 Incorporated,
 Los Angeles, California.

B.T.A. Docket: #61290.

INCOME TAX LIABILITY.

Years	Income Tax Liability	Income Tax Assessed	Deficiency
1927	\$ 21,917.38	\$ 19,042.13	\$ 2,875.25
1928	108,974.66	85,979.30	22,995.36
Totals	\$130,892.04	\$105,021.45	\$25,870.61

The United States Board of Tax Appeals, in its decision promulgated January 31, 1935, holds that the petitioner is not subject to tax under the provisions of section 220, and section 104 of the Revenue Acts of 1926 and 1928, respectively.

1927

NET INCOME.

Net income as reported in the sixty-day letter
 dated November 17, 1931 \$227,368.25

Deduct:

Adjustments to reflect the net income agreed upon and indicated in the Board's decision.

- 1. Salaries \$30,000.00
- 2. Laughlin Park maintenance 9,292.75
- 3. Yacht maintenance 16,028.45
- 4. Kitchen expense 2,571.92
- 5. Miscellaneous expense 1,830.00
- 6. Depreciation 5,294.18

65,017.30

Net income as adjusted \$162,350.95

COMPUTATION OF TAX.

Net income as adjusted	\$162,350.95
Amount subject to tax	162,350.95
Income tax at 13½%	21,917.38
Previously assessed	19,042.13
	<hr/>
Deficiency in tax	\$ 2,875.25

EJF/NK [105]

1928

NET INCOME.

Net income as reported in the sixty-day letter dated November 17, 1931	\$736,744.65
Adjustments to reflect the net income agreed upon and indicated in the Board's decision.	
Add:	
1. Additional profit on stock sold	253,871.68
	<hr/>
	\$990,616.33
Deduct:	
2. Salaries	\$30,000.00
3. Laughlin Park maintenance	4,437.94
4. Yacht maintenance	16,647.96
5. Kitchen maintenance	2,707.04
6. Miscellaneous expense	4,625.00
7. Depreciation	7,928.74
8. Loss—California Air Construction Company	10,000.00
9. Bad debts	6,147.46
	<hr/>
	82,494.14

Net income as adjusted	\$908,122.19
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COMPUTATION OF TAX.

Net income as adjusted	\$908,122.19
Amount subject to tax	908,122.19
Income tax at 12%	108,974.66
Previously assessed	85,979.30
	<hr/>
Deficiency in tax	\$ 22,995.36

EJF/NK

United States Board of Tax Appeals.

Washington, D. C.

Docket No. 52996.

CECIL B. deMILLE PRODUCTIONS, INC.,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION.

Respondent having filed under Rule 50, a proposed redetermination of deficiencies in this proceeding computed as in accordance with the Opinion of the Board promulgated January 31, 1935, and petitioner having agreed that this recomputation is correct, it is hereby

ORDERED AND DECIDED that there are deficiencies for the years and in amounts as follows:

1924	\$8,945.47
1925	8,025.88
1926	6,245.72

[Seal] (Signed) J. RUSSELL LEECH,
Member.

Entered Apr. 16, 1935. [107]

United States Board of Tax Appeals.

Washington, D. C.

Docket No. 65123.

CECIL B. deMILLE, PRODUCTIONS, INC.,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION.

Respondent having filed under Rule 50, a proposed redetermination of deficiency in this proceeding computed as in accordance with the Opinion of the Board promulgated January 31, 1935, and petitioner having agreed that this recomputation is correct, it is hereby

ORDERED AND DECIDED that there is a deficiency in income tax for the year 1929 in the sum of \$1,896.88.

[Seal] (Signed) J. RUSSELL LEECH,
Member.

Entered Apr. 16, 1935. [108]

United States Board of Tax Appeals.

Washington, D. C.

Docket No. 61290.

CECIL B. deMILLE PRODUCTIONS, INC.,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION.

Respondent having filed under Rule 50, a proposed redetermination of deficiencies in this proceeding computed as in accordance with the Opinion of the Board promulgated January 31, 1935, and petitioner having agreed that this recomputation is correct, it is hereby

ORDERED AND DECIDED that there are deficiencies in tax for the years and in the amounts as follows:

1927	\$ 2,875.25
1928	22,995.36

[Seal] (Signed) J. RUSSELL LEECH,
Member.

Entered Apr. 15, 1935. [109]

[Title of Court and Cause.]

PETITION FOR REVIEW AND ASSIGN-
MENTS OF ERROR.

To the Honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

NOW COMES Guy T. Helvering, Commissioner of Internal Revenue, by his attorneys, Frank J. Wideman, Assistant Attorney General, Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue, and Mason B. Leming, Special Attorney, Bureau of Internal Revenue, and respectfully shows:

I.

The petitioner on review (hereinafter referred to as the Commissioner) is the duly authorized, qualified and acting Commissioner of Internal Revenue of the United States, holding his office by virtue of the laws of the United States. The respondent on review (hereinafter referred to as the taxpayer) is a corporation organized and existing under and by virtue of the laws of the State of California, with offices at Los Angeles, California. The taxpayer filed its income tax returns for the calendar years 1924 to 1930, inclusive, with the Collector of Internal Revenue for the Sixth District of California, whose [110] office is located in the City of Los Angeles, State of California, within the judicial district of the United States Circuit Court of Appeals for the Ninth Circuit.

II.

The Commissioner determined deficiencies in income taxes for the calendar years 1924 to 1926, inclusive, on December 29, 1930, for 1927 and 1928 on November 17, 1931, and for 1929 on March 1, 1932, in the respective amounts of \$157,599.66, \$363,605.62, \$334,871.25, \$138,217.60, \$387,599.80 and \$104,423.60. On the respective dates above mentioned, in accordance with the provisions of Section 274 of the Revenue Act of 1926 and Section 272 of the Revenue Act of 1928, the Commissioner sent to the taxpayer by registered mail separate notices of said deficiencies. The taxpayer filed a separate appeal from each of said notices of deficiency with the United States Board of Tax Appeals.

The taxpayer's appeals to the Board of Tax Appeals were consolidated and heard by the Board December 13-16, 1933. On January 31, 1935, the Board of Tax Appeals promulgated its findings of fact and opinion in said appeals, 31 B.T.A. No. 207. On April 15 and 16, 1935, the Board of Tax Appeals entered its decisions and final orders of redetermination in said appeals wherein and whereby the Board ordered and decided that there are deficiencies in income taxes for 1924 to 1929, inclusive, in the respective amounts of \$8,945.47, \$8,025.88, \$6,245.72, \$2,875.25, \$22,995.36 and \$1,896.88. [111]

III.

The deficiencies in controversy before the Board of Tax Appeals for the calendar years 1924 to 1929,

inclusive, arose from the determination of the Commissioner that the taxpayer was subject to a 50% tax on its net income in each of said years under the provisions of Section 220 of the Revenue Acts of 1924 and 1926, and Section 104 of the Revenue Acts of 1928. There is no controversy concerning the amount of the net income in the respective years.

The taxpayer was incorporated under the laws of the State of California in May, 1922, to succeed a partnership theretofore known as the Cecil B. deMille Productions, formed in August, 1920, and composed of Cecil B. deMille and his wife, Constance A. deMille, his wife's step-mother, Mrs. Adams, and his personal attorney, Neil S. McCarthy. For sometime prior to August 16, 1920, Cecil B. deMille had been employed by Famous Players-Lasky Corporation as a director of motion pictures for that company. On August 16, 1920, an agreement was entered into by said deMille with Famous Players-Lasky Corporation in which it was provided that the agreements theretofore existing between them were thereby cancelled and terminated. The contract recited that deMille "has at the time of the execution of this agreement executed an agreement with Cecil B. deMille Productions, a co-partnership, for the distribution of certain motion pictures to be produced by" deMille. The contract further provided, however, that Mr. deMille, throughout the period of the said [112] agreement between Famous Players-Lasky Corporation and the

partnership, to wit, from August 16, 1920, to and including August 15, 1925, should remain as the director general of the Famous Players-Lasky Corporation and should render his services as such without compensation therefor other than what he might receive from Cecil B. deMille Productions by virtue of being one of the partners of said firm. The "FIRST" paragraph of the agreement between Famous Players-Lasky Corporation and the above-mentioned partnership provided in part that "each and all of such pictures shall during the course of their production and at and after their completion be and remain the property of the Distributor (Famous Players-Lasky Corporation) for the exclusive use of the Distributor in all parts of the world". The contract between the partnership and Famous Players-Lasky Corporation was entered into by the latter at the request of Mr. deMille and in it the partnership is referred to as the "Producer" and Famous Players-Lasky Corporation as the "Distributor". It provided, among other things:

"THAT WHEREAS, Cecil B. deMille, one of the partners of the Producer, has heretofore been employed by the Distributor as a director of motion picture productions, and

"WHEREAS, the Distributor is desirous of securing for itself motion picture productions which shall be directed by the said Cecil B. deMille, for the term hereinafter set forth, and

"WHEREAS, a co-partnership has been

formed for the purpose of producing motion pictures to be directed solely by the said Cecil B. deMille, which said co-partnership is the Cecil B. deMille Production, herein called the Producer, and [113]

“WHEREAS, the said Cecil B. deMille has agreed to direct for said Producer not less than two (2) nor more than four (4) motion pictures each year for the period of five (5) years from August 16, 1920 to August 16, 1925.

“NOW THEREFORE, IN CONSIDERATION of the premises and of the sum of One Dollar (\$1.00) by each of the parties hereto to the other in hand paid, the receipt whereof is hereby acknowledged, and of the mutual covenants and agreements herein set forth, the parties hereto do hereby agree as follows:

“FIRST: The Producer agrees to manufacture and produce not less than two (2) nor more than four (4) motion pictures each year for the term of this agreement, each of which shall be directed by Cecil B. deMille, personally, and to deliver all of the productions so directed by the said Cecil B. deMille for the Producer during said period, to the Distributor as and when the same are completed. * * *

“SECOND: The Distributor agrees to accept all the productions so directed by the said Cecil B. deMille and delivered to it by the Producer, * * *.

“THIRD: The Distributor shall furnish to the Producer, and the Producer shall be entitled to use as and when it shall desire the use of the same and at the actual cost to the Distributor thereof, all of the facilities and property of the Distributor to the full extent that the said Cecil B. deMille has heretofore been accustomed or privileged to use the same while in the employ of the Distributor, * * *. The Distributor shall also furnish to the Producer, without any additional charge therefor, the use of the quarters now occupied by the said Cecil B. deMille and the facilities in connection therewith, and two offices all in the studios of the Distributor at 1520 North Vine Street, Hollywood, California, for the use of the executive forces of the Producer.

“FOURTH: The Distributor agrees to pay all liabilities and obligations by the Producer incurred in the manufacture of each and all of the productions to be delivered to the Distributor under the terms hereof, as and when such liabilities, expenditures and obligations are due and payable, including all compensation and liability insurance, * * *. [114]

* * * * *

“SIXTH: The Distributor agrees to pay to the Producer quarterly thirty per cent (30%) of the net profits realized by the Distributor throughout the entire world from rentals from Exhibitors or sales of State Rights or any

other use or disposition of the same, for each of said productions, and the Distributor shall advance and pay to the Producer on account of said thirty per cent (30%) of the net profits, each week during the term of this agreement, the following sums, which the producer shall not under any conditions be obliged to repay to the Distributor, except that the same shall be charged against the thirty per cent (30%) of said net profits to be paid to the Producer. The first of said weekly payments shall be made August 21, 1920. Said payments shall be made as follows:

Thirty-five Hundred Dollars (\$3500) per week for the first four (4) weeks of the term hereof;

Forty-five Hundred Dollars (\$4500) per week for the next four (4) weeks of the term hereof;

Fifty-five Hundred Dollars (\$5500) per week for the next four (4) weeks of the term hereof;

Sixty-five Hundred Dollars (\$6500) per week for the remainder of the term of this agreement. * * *

* * * * *

“NINTH: Each and every of the pictures delivered to the Distributor under the terms hereof shall be advertised and publicized by it to the same extent and in the same general manner as is indicated by the advertising and

publicity given to the photoplay, 'Male and Female,' directed by Cecil B. deMille and marketed by the distributor, and in all publicity and advertising the name of said Cecil B. deMille shall receive such attention and prominence as was given to it in the advertising and publicity of 'Male and Female,' and each and every of the said pictures shall be announced as a 'Cecil B. deMille Production.' [115]

* * * * *

“ELEVENTH: The net profits from each of said productions shall be determined as follows:

“Each quarter from the gross income received by the Distributor from film rentals of each such production in the United States or Canada, or from film rentals or sales of State Rights in other countries, or any other use or disposition of the same, there shall be deducted, the cost of sales and distribution, the cost of negative, prints, publicity and advertising, overhead and federal and other taxes; the residue shall constitute the net profit.

“TWELFTH: It is the expectation of this agreement that the Producer shall receive *and* average minimum within twenty-four (24) months of Two Hundred Thousand Dollars (\$200,00.00) as its thirty per cent (30%) of the net profits on each picture. In the event that at any time the Producer has not received in percentages or advances Two Hundred Thousand

Dollars (\$200,000) multiplied by the number of motion pictures delivered hereunder which have been at that time released twenty-four months, then at that time (subject to the limitations hereinafter in his paragraph contained) the Distributor shall credit or advance as may be proper, to the Producer, a sum sufficient to equal an average of \$200,000, multiplied by the number of pictures that have been released twenty-four months, a similar adjustment, if necessary, shall be made.

“It is agreed, however, that at no time shall the Distributor be obliged to credit or pay to the Producer any sum which would make the total advances, credits and payments to the Producer exceed One Hundred Per Cent (100%) of the net profits on all productions at the time of such adjustment; nor shall the Distributor be obliged to credit or pay any sum which would make the total advances, credits and payments exceed \$200,000 per production, multiplied by the number of productions which have been released two years at that date.

“THIRTEENTH: The party of the second part covenants and agrees that it will produce no motion pictures except those deliverable hereunder, nor will it engage in any other business than the making of pictures to be delivered pursuant to this contract. It further guarantees and agrees that it will not permit the name of Cecil B. deMille to be announced as the maker,

director or supervisor, or as interested in the production of any motion [116] picture except those deliverable hereunder and it represents that it has a contract with said Cecil B. deMille for his exclusive services during the period of this contract.

* * * * *

“FIFTEENTH: The party of the second part hereby consents and agrees that if not previously paid, the party of the first part may deduct the sum of One Thousand Dollars (\$1,000) each week beginning the 21st day of August, 1924, from the advances herein agreed to be made weekly, and shall in addition thereto deduct the amount of interest each week on any unpaid portion of the sum of Fifty Thousand Dollars (\$50,000) owing by Cecil B. deMille to said Distributor, together with interest thereon at the rate provided for in the note now existing and executed in favor of the party of the first part by said Cecil B. deMille, to evidence said loan of \$50,000.

“SIXTEENTH: The term of this agreement shall commence on the 16th day of August, 1920, and shall extend for a period of five (5) years, to wit: to and including the 15th day of August, 1925.”

The following instructions, to the bookkeeping department, under the above contract, were formulated November 17, 1920:

“(1) All materials, gowns, props, etc., now in what is known as the DeMille Wardrobe Department, are to be carried on the books of the Lasky Company in a so-called Stock Account, and no rental for these shall be charged to the Cecil B. deMille Productions.

“(2) All gowns, props, etc., which are now made up ready for use may be used by the DeMille Productions without charge. All new materials which are later made up into gowns, props, etc., are to be charged to the DeMille Productions at actual cost. When gowns, props, etc., are once used and charged to the DeMille Productions, they may be used in future productions without charge unless re-made; in which event, the cost of re-making, plus the amount paid for any new materials used, shall constitute the charge.

“(3) Any purchases made for this Department for the deMille Productions, during the life of the contract, are [117] to be charged to this Stock Account, and are to be charged to a DeMille Production only when issued to and received by the Cecil B. DeMille Productions, and shall be returned to the DeMille Wardrobe Department, unless destroyed, and no charge shall be made to the Cecil B. DeMille Productions for the use of the same thereafter. They shall be sold or rented only by Cecil B. DeMille Productions, who shall have the complete authority to designate the times, persons and occasions to

whom or on which the same shall be sold or rented, and shall also have the authority to fix the prices for such sales or rentals, provided that it shall give one week's notice of such proposed sale or rental to the Famous Players-Lasky Corporation, and if it should be dissatisfied with the price of either the sale or rental thereof, it may rent the same for the same period of time, at the same figure, and in the event of it being dissatisfied at the price at which the Cecil B. DeMille Productions elects to dispose of the same, it shall have the right to purchase such articles at the same price. The monies obtained from the sale or rental of any such articles shall be credited to the picture then in course of production or to the next succeeding picture.

“(4) At the expiration of the contract, the wardrobe is to be left as nearly as will be practicable in the same condition as that now existing as to quantity and quality of new materials, gowns, props, etc., however, if it is destroyed by fire, it shall be replaced out of the insurance money as needed.

“(5) When artists are required for the DeMille Productions, Mr. deMille shall indicate what artists he needs, and if they are not in stock they are to be selected by Mr. deMille and engaged by the Famous Players-Lasky Company. When not in use in the DeMille Produc-

tions, the artists are to go into the Lasky stock and Lasky can use them when they are not required for the DeMille Productions, excepting individual artists whom Mr. DeMille wishes to hold for his pictures exclusively. When not in use in Mr. DeMille's pictures, they shall be charged to the Lasky overhead, nevertheless."

On February 19, 1921, the following memorandum was signed by Famous Players-Lasky Corporation and the partnership. [118]

"At the request of deMille Productions, the following procedure is outlined for the handling of weekly expenditures, in the making by deMille Productions of motion pictures for Famous Players-Lasky Corporation pursuant to existing contract.

"The western studio will continue as heretofore to pay for the various expenditure, both labor and material, and will notify the deMille Productions of such amount weekly. For this amount, the deMille Productions will reimburse the studio by their check. Simultaneously with the giving of the check, the deMille Productions will deposit a draft on the Famous Players-Lasky Corporation of New York with the Commercial National Bank of Los Angeles, wiring the comptroller of the amount.

"The Famous Players-Lasky Corporation will deposit a certified check with the Hanover National Bank of New York for the credit of the

Commercial National Bank of Los Angeles account of deMille Productions, with instructions to wire the Commercial National Bank by collect message. The Commercial National Bank will then mail the paid draft to the Famous Players-Lasky Corporation of New York. It is understood that changes may be made in the banks of the direction of the Producer.

“It is understood and agreed that nothing in the above procedure or in any accounting entries that may arise out of it, will in any way change or modify the existing agreement, that the pictures made by the deMille Productions are to remain, at all times, whether in process or finished, the property of the Famous Players-Lasky Corporation.

“It is also distinctly understood and agreed that the procedure outlined above covers only the direct charges made at the Studio, including studio overhead, and does not include the Home Office overhead and the other expenses outlined in the contract, such as cost of sales and distribution, prints, publicity, advertising, Federal and other taxes.”

The contract of August 16, 1920, between Cecil B. deMille and the partnership, wherein deMille is called the “Artist”, provided, in part, as follows:

[119]

“That the Partnership does hereby engage and employ the Artist, and the Artist does hereby covenant and agree to render and per-

form his services as a director of motion pictures and photoplays, to and for the partnership exclusively, for the period commencing August 16th, 1920, and extending to and including the 15th day of August, 1925. The Artist shall receive as full compensation for his services so rendered, a salary at the rate of Fifteen Hundred Dollars (\$1500.00) per week."

The partnership capital consisted of \$25,000.00 allocated as follows:

Cecil B. deMille	45%	\$11,250.00
Constance A. deMille	25%	6,250.00
Ella King Adams	20%	5,000.00
Neil S. McCarthy	10%	2,500.00
	100%	\$25,000.00

With the execution of the partnership agreement and of the contract between the partnership and deMille, between the partnership and Famous Players-Lasky Corporation, and between deMille and Famous Players-Lasky Corporation, on August 16, 1920, the partnership had in sight, over the period of time provided for in the contract, compensation for deMille's personal services as a director of motion pictures, to be financed by Famous Players-Lasky Corporation, a guaranteed amount of \$1,666,000.00, consisting of \$3,500.00 for each of the first four weeks, \$4,500.00 for each of the next four weeks, \$5,500.00 for each of the following four weeks

and \$6,500.00 a week for the remainder of the term or 248 weeks. Out of the last-mentioned sum the partnership was to pay deMille, over the same period of time, an aggregate amount of only \$390,000.00, or \$1,500.00 a week for 260 weeks. [120] deMille procured an option, at the time the partnership was organized, from each member of the partnership whereby he had the privilege, for a period of six years, of acquiring the interest of each of them upon payment to them respectively of the amount specified as their contribution to the partnership capital. Concerning the options, deMille testified in substance he insisted upon the options upon the interests of the other parties to the partnership and at the prices which were fixed because he felt he was entitled at all times to be in a position to dominate the company and it was necessary that he should control those interests. deMille's attorney (McCarthy) testified "I believe the matter of giving options was my idea. Mr. deMille may have had the idea. I followed that practice in connection with many companies I became associated with. I have done it in other companies, to put the person who dominates the company in a position where he can not be taken advantage of."

McCarthy also testified that he did not receive his distributive share of the partnership income; that "there was no intention of paying it out", but that he believed he did pay an income tax on it; that the only distribution he ever received from the

partnership was a 100% dividend in 1922. The only earnings or profits distributed by the partnership to its shareholders during its existence was a 100% dividend amounting to \$25,000.00 in the year 1922. This "dividend" was not the payment of "distributive shares" of income. [121]

The partnership was changed into a corporation and the assets of the partnership were transferred to the corporation (taxpayer) as of June 10, 1922.

The partnership assets were transferred to the taxpayer as of June 10, 1922, in exchange for 4,000 shares of its capital stock. A part of the assets transferred by the partnership to the taxpayer consisted of notes and accounts receivable in the amount of \$145,247.45 due from Mr. deMille and from aviation corporations controlled by him.

No further capital was put into the taxpayer when it was formed and the assets taken over from the partnership consisted of the partnership's original capital and accumulated earnings. The contract between the partnership and deMille and the contract between the partnership and Famous Players-Lasky Corporation were transferred to the taxpayer and the contract between deMille and Famous Players-Lasky Corporation continued in force.

The application of the taxpayer to the Commissioner of Corporations, State of California, for authority to issue \$400,000.00 par amount of its capital stock for the partnership assets set forth among other things, the following:

"IV.

"That the corporation has received, and subject to the approval of the Commissioner of Corporations has accepted an offer from CECIL B. deMILLE, CONSTANCE A. deMILLE, ELLA KING ADAMS and NEIL S. McCARTHY, being [122] the partners composing the CECIL B. deMILLE PRODUCTIONS, to transfer to this corporation the property hereinafter described, which description is as follows, to wit:

ASSETS.

Cash in Banks	30,000.00	
Securities & Investments	54,519.86	
Automobiles	5,190.00	
Furn. & Fixtures	230.00	
Props	24,371.50	
Scenarios & Picture		
Rights	10,000.01	
Loans Receivable	145,578.45	269,889.82

LIABILITIES.

Accounts payable	17,500.00
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for Four Thousand (4,000) shares of the capital stock of this corporation, which said shares of stock shall include Five (5) Shares of stock subscribed for by the organizers of this corporation.

"V.

"That the net tangible assets of the said CECIL B. deMILLE PRODUCTIONS, after

deducting the liabilities of Seventeen Thousand Five Hundred Dollars (\$17,500.00) are of the value of Two Hundred Fifty Two Thousand, Three Hundred Eighty-nine Dollars and Eighty-two Cents (\$252,389.82).

“That the said CECIL B. deMILLE PRODUCTIONS, in addition to said physical assets described in the statement hereinbefore set forth, has a contract with CECIL B. deMILLE, wherein and whereby the said CECIL B. deMILLE has agreed for the period of Five (5) years from August 16, 1920, to direct motion pictures being produced by the said CECIL B. deMILLE PRODUCTIONS, and that the said CECIL B. deMILLE PRODUCTIONS has a contract with the FAMOUS PLAYERS-LASKY CORPORATION, wherein and whereby the said CECIL B. deMILLE PRODUCTIONS produces motion pictures for the said FAMOUS PLAYERS-LASKY CORPORATION and which are released and distributed by the said FAMOUS PLAYERS-LASKY CORPORATION. [123]

“That the valuation placed upon said assets hereinabove set forth, is the actual cost price of said property to the corporation.

“That the good will of the said CECIL B. deMILLE PRODUCTIONS, and the value of the said contracts hereinbefore described, and the other intangible assets of the said CECIL B. deMILLE PRODUCTIONS, all of which

are being transferred to said corporation by the said CECIL B. deMILLE PRODUCTIONS, a co-partnership, are of the value in excess of One Hundred and Fifty Thousand Dollars (\$150,000.00).

“VI.

“That the said CECIL B. deMILLE PRODUCTIONS is owned by the following persons, in the following proportions to wit:

CECIL B. deMILLE owns a forty-five percent (45%) interest therein;

CONSTANCE A. deMILLE owns a twenty-five percent (25%) interest therein;

ELLA KING ADAMS owns a twenty percent (20%) interest therein;

NEIL S. McCARTHY owns a ten percent (10%) interest therein.

“VII.

“That the total value of all of the assets, including the contracts hereinbefore described, and the good-will of the said CECIL B. deMILLE PRODUCTIONS, a co-partnership, is of the value of at least Four Hundred Thousand Dollars (\$400,000.00).

* * * * *

“IX.

“That the stock of said corporation will be owned by the present partners of the above mentioned partnership in the same proportion that the said partners own the respective interests in said partnership, except that JOHN H. FISH-

ER will own a qualifying share of stock in said corporation, which will be taken from the capital stock of the said CECIL B. deMILLE.”

The capital stock of the taxpayer, consisting of 4,000 shares, was issued to the four members of the partnership in proportion to [124] their interests in the partnership. The record ownership of the stock of the taxpayer, as originally issued, was as follows: Cecil B. deMille, 1,800 shares; Constance A. deMille, 1,000 shares; Ella King Adams, 800 shares; Neil S. McCarthy, 399 shares, and John H. Fisher, (nominee of Cecil B. deMille) 1 share. Fisher did not pay anything for the share issued in his name and later relinquished it without compensation therefor. On April 24, 1924, deMille purchased the 400 shares held by his personal attorney, Neil S. McCarthy, and paid McCarthy therefor the sum of \$2,500.00, the amount mentioned in the aforesaid option. The value of McCarthy's 400 shares as of January 1, 1924, as shown by taxpayer's books was \$57,185.42. On February 9, 1926, deMille purchased, in like manner, the 800 shares held by Ella King Adams and paid to her \$5,000.00, the amount mentioned in the option. The value of Mrs. Adams' 800 shares of stock as of January 1, 1926, as shown by taxpayer's books was \$211,807.42.

Cecil B. deMille has been at all times and now is president of the taxpayer, Cecil B. deMille Productions, Inc.

The Cecil B. deMille Productions, Inc., (taxpayer) started business with the same assets and with the same contractual relations between itself

and Cecil B. deMille and between itself and Famous Players-Lasky Corporation as had obtained in the case of the partnership immediately prior to the change of the business from partnership to corporate character. The contract of August 16, 1920, with Famous Players-Lasky Corporation continued in force until succeeded by a new contract with the same company November 16, 1923. [125]

The contract of November 16, 1923, provided, among other things, as follows:

“A contract is now in existence between the Distributor and the Producer, which said contract was originally entered into between the Distributor and CECIL B. deMILLE PRODUCTIONS, a co-partnership, as of the 16th day of August, 1920, and which contract was subsequently assigned to CECIL B. deMILLE PRODUCTIONS, INC., the Producer herein named, which said Producer has succeeded to all of the rights therein formerly held by CECIL B. deMILLE PRODUCTIONS, a co-partnership. Said contract is hereby terminated and cancelled and each of the parties hereto is hereby relieved from any and all liability and obligations of every kind thereunder, it being understood that the obligations to be performed on account of everything that has been done under said contract dated August 16, 1920, will be provided for herein.

“It is agreed that the pictures ‘AFFAIRS OF ANATOLE’, ‘SATURDAY NIGHT’, ‘FOOLS PARADISE’, ‘MANSLAUGHTER’,

and 'ADAM'S RIB' shall be considered as having been produced under said agreement dated as of August 16, 1920, and that the picture 'THE TEN COMMANDMENTS' and all pictures hereafter produced during the term of this contract, shall be considered as having been produced under the terms of THIS agreement.

"All pictures produced under said agreement of August 16, 1920, shall be exhibited, distributed and publicized in accordance with the terms provided for herein for the exhibition, distribution and publicizing of pictures to be made under the terms of this agreement.

"In lieu of the compensation and guarantees provided for in said agreement of August 16, 1920, to be paid to the Producer for and on account of the pictures produced under said agreement of August 16, 1920, the Distributor shall, and promises and agrees to pay to the Producer, twenty per cent (20%) of the gross amounts heretofore or hereafter received by the Distributor throughout the entire world, from or on account of the distribution, sale and any other use or disposition of said productions, and of each of them, until the said gross amounts from each such picture, have reached the sum of ONE MILLION DOLLARS (\$1,000,000) and to pay to the Producer, twenty-five per [126] cent (25%) of the gross amounts from each such pictures, over and above the sum of ONE MILLION DOLLARS (\$1,000,000) so received by the Distributor.

* * * * *

“The Distributor shall, and promises and agrees to pay to the Producer for each and every picture produced under the terms of THIS agreement, commencing with the picture known as ‘THE TEN COMMANDMENTS’, fifteen (15%) per cent of the gross amounts, up to the sum of ONE MILLION DOLLARS (\$1,000,000) received by the Distributor from or on account of the distribution, sale and any other use or disposition of said pictures and each of them, and shall pay to the Producer twenty-five per cent (25%) of the gross amounts over and above the sum of ONE MILLION DOLLARS (\$1,000,000) so received on account of each and every one of said pictures, * * *

* * * * *

“The Distributor shall, and promises and agrees to pay to the Producer as an advance against the moneys which the Producer shall be entitled to receive on account of the said percentages, the sum of SIXTY SEVEN HUNDRED THIRTY ONE DOLLARS (\$6731.00) on Saturday the 17th day of November, 1923, and \$6731.00 on Saturday of each week thereafter during the period of this agreement, which said moneys so advanced to the Producer, the Producer shall not in any event, or under any conditions, repay, or be required or obliged to repay to the distributor.

* * * * *

“* * * and in all publicity and advertising the name of CECIL B. deMILLE shall receive

such attention and prominence as was given to it in the advertising and publicity of said pictures, and each and every of said pictures shall be announced as a 'CECIL B. deMILLE PRODUCTION.'

"The Producer covenants and agrees that it will produce no motion pictures except those deliverable hereunder, and it further guarantees and agrees that it will not permit the name of CECIL B. deMILLE to be announced as the maker, director or supervisor, or as interested in the production of any motion picture except those deliverable hereunder, and it represents that it has a contract with the said CECIL B. deMILLE for his exclusive services during the period of this contract. [127]

* * * * *

"Cecil B. deMille shall have supreme authority in the conduct and operation of the California studios of the Distributor subject only at all times to the authority of Mr. Jesse L. Lasky, provided, however, that any authority exercised by Mr. deMille shall, in the judgment of the said Cecil B. deMille, be for the best interests of the Famous Players-Lasky Corporation. Mr. deMille shall have supreme authority in all matters pertaining to the production of the pictures to be made by the Producer herein, so long as said pictures are made in compliance with the terms hereof.

* * * * *

“* * * the weekly advances of \$6731.00 per week shall cease upon the death or incapacity of Cecil B. deMille as aforesaid.”

At a meeting of taxpayer's board of directors December 23, 1924, Mr. deMille reported that under the contract with Famous Players-Lasky Corporation the taxpayer was making all the money and that the Famous Players-Lasky Corporation was most anxious therefore to negotiate some other arrangement. Mr. deMille was authorized to negotiate with Famous Players-Lasky Corporation for a new contract or for such changes in the old contract as they deemed advisable.

At a later meeting of taxpayer's board of directors on January 6, 1925, Mr. Fisher reported that Mr. deMille had not so far been successful, in his negotiations with the Lasky Corporation, looking to the making of a new contract. At a still later meeting of the board of directors January 20, 1925, Mr. Fisher reported that the contract between Famous Players-Lasky Corporation and the taxpayer had been cancelled and that Mr. deMille was making arrangements in [128] New York for the formation of a new organization for production and distribution of his and other pictures.

On February 13, 1925, a contract was entered into between the Cinema Corporation of America and its subsidiary as parties of the first part, sometimes therein referred to as the “Companies”, and Cecil B. deMille Pictures Corporation, Cecil B. deMille Productions, Inc., (taxpayer) and Cecil B. deMille, individually, he being referred to in the contract as

the Producer. The said Cinema Corporation contract, of February 13, 1925, provided, among other things, that:

“WHEREAS, a contract is now in existence between the Producer (Cecil B. deMille) and the said Cecil B. deMille Productions, Inc., under and by virtue of which the Producer is required and obligated to perform his services for the said Cecil B. deMille Productions, Inc., and

“WHEREAS, as a part of this transaction the said Cecil B. deMille Productions, Inc., has agreed to release and relinquish its right to the services of the Producer in consideration of the payment of moneys and the performance of the other obligations herein set forth;

* * * * *

“The Producer shall be the Executive Head of the business and affairs of the Companies in California, subject in such executive position to the President and Board of Directors of the Parent Corporation, and he shall have complete and final authority in all matters pertaining to the pictures to be produced hereunder and to all other pictures which the Companies or either of them may make at any time during the term hereof; it being understood that the Companies shall not engage either directly or through any other person or corporation in the production of motion pictures other than the production of those herein provided to be made under the Producer. Nothing herein contained, how-

ever, shall be construed to abridge the rights and power of the Board of Directors of any [129] officer or officers acting under the power of such Board of Directors, or the executive committee thereof, to contract or arrange for the production by independent or other producers of pictures to be distributed through the Parent Corporation or any other Subsidiary Corporation or corporations of the Parent Corporation whether such productions be financed in whole or in part by the Companies or either of them.

“There shall be no person or officer of said Companies of equal or superior authority to the Producer in California, other than the President of the Parent Corporation, and no equal or superior officer or authority to that of Producer in any matters pertaining to the production of motion pictures hereunder, including the selection of stories or other literary compositions upon which the same shall be based wherever the same may be considered decided or carried out, and any and all decisions by the Producer in all matters of production shall be complied with and carried out by the corporation subject to the number of productions, the cost thereof and the cost of motion picture rights therefor as herein set forth.

* * * * *

“The Producer shall select the stories, compositions or other literary material required from time to time, and plan the pictures to be made

by the Companies hereunder during each picture year, and secure by purchase, contract or otherwise said material and the necessary organization and articles for the production of the pictures herein provided for; all contracts for any of the above to be made in the name of the Parent Corporation or Subsidiary Corporation as the Parent Corporation shall from time to time determine. The Companies shall at all times furnish the funds necessary to satisfy the liabilities and/or obligations incurred in so doing, as and when the same shall be required, and shall pay and satisfy the said obligations and liabilities as they mature within the limitations herein.

* * * * *

“The Companies shall pay to the Producer the sum of Two Thousand Dollars (\$2,000.00) per week each and every week during the term hereof beginning the 1st day of February, 1925.

[130]

“The said Cecil B. deMille Productions, Inc., does hereby sell, assign, transfer and set over, and relinquish and quit-claim unto the Parent Corporation and the Subsidiary Corporation any and all right, title, claim and interest of any and every kind, and nature, which it now has, upon and for the services of Producer as a Director and/or Producer of motion pictures under the terms of the contract of employment now existing between the said Cecil B. deMille Productions, Inc., and the said Producer, and

upon the further express condition and agreement that in the event that this agreement as between the said parent and subsidiary corporation on the one part and the said Producer on the other part is terminated at any time within the period of five years from the date hereof, that the services of said producer as director and producer of motion pictures shall thereupon revert to the said Cecil B. deMille Productions, Inc., and that the said Cecil B. deMille Productions, Inc., shall thereupon have the right to the said services of the said producer from the date of such termination of this agreement and for a period equal to the unexpired term of the contract now in existence between the said Producer and the said Cecil B. deMille Productions, Inc., and the said Producer does hereby agree in the event of such termination of this contract to so render and perform his services as a director and producer of motion pictures for the said Cecil B. deMille Productions, Inc., for such period of time, and upon and in accordance with all of the terms and conditions of said contract now in existence between the said Producer and the said Cecil B. deMille Productions, Inc.

“In consideration of the release and transfer and assignments and of the agreement herein set forth by the said Cecil B. deMille Productions, Inc., the said Parent and Subsidiary Corporations do hereby agree to pay to the said Cecil B. deMille Productions, Inc., the sum of forty-five Hundred Dollars (\$4500) per week

each and every week beginning March 9, 1925, during and throughout the continuation of this agreement, and any extension or renewal thereof, and until the termination thereof, and during the period that the said Producer is engaged in rendering or performing any service fo the Companies or either of them.

* * * * *

“There shall be no obligation on the part of any one to repay, and the companies shall not, nor shall either of [131] them be entitled to recoup the payments of forty-five Hundred Dollars (\$4500) per week made to the said Cecil B. deMille Productions, Inc., during the weeks and time that said Producer is engaged in directing the pictures required to be personally directed by him under the terms hereof.

* * * * *

“The Producer agrees that during the continuance of this agreement he will devote his entire time and attention to the performance of duties required of him hereunder, except such time as shall be required in connection with his own private investments.

* * * * *

“The producer hereby consents to the use of the name Cecil B. deMille as part of the name of the Subsidiary Corporation with the following reservations and upon the express conditions however that the use of said name shall continue only so long as this agreement continues in force and the said Cecil B. deMille continues in the employment of the said Compa-

nies and no longer; and that in the event of the termination of this agreement for any reason whatsoever or of the cessation or of the employment of said Cecil B. deMille by the said Companies under the terms hereof, that the name of the said subsidiary Corporation shall be changed and the name Cecil B. deMille shall be eliminated as a part thereof, and that the changing of said name shall be done immediately upon the cessation of said services or the termination of this agreement; and the Companies and each of them do agree that in the event of the termination of this agreement or the cessation of said services that they will not, nor either of them, have any right whatsoever to any further use of said name.

* * * * *

“The name of the Producer shall be included in any and all paid publicity and advertising issued by the Companies in connection with each and every of the pictures personally directed and/or supervised by the Producer, and the name of the Producer shall be in type of equal size with any other type used therein. The production shall be advertised and published in connection with all productions which he personally directs in a similar manner to the advertising of ‘Manslaughter’ directed by him for Famous Players-Lasky Corporation. [132]

* * * * *

“It is agreed that this contract is not made for the benefit of said Cecil B. deMille Produc-

tions, Inc., and it has no rights therein, except rights to receive the sums of money herein provided for, for so long a time as this contract is in full force and effect between the Producer and the Companies, and upon the termination hereof, to receive again the services of said Cecil B. deMille.”

The contract between taxpayer and Cinema Corporation of America was terminated in 1927. Thereafter, on April 11, 1927, the taxpayer entered into a contract with Pathe Exchange, Inc., which provided in part as follows:

“PATHE EXCHANGE, INC., a New York corporation, herein called ‘Pathe’ and also included in the expression ‘Companies’.

“CECIL B. DEMILLE PICTURES CORPORATION, a Delaware corporation, herein called ‘Pictures company,’ and also included in the expression ‘Companies’,

“CECIL B. DEMILLE PRODUCTIONS, INC., a California corporation, herein called ‘Production Company’, and

“CECIL B. DEMILLE, herein referred to as ‘DeMille’,

* * * * *

“SIXTH: deMille shall be the executive head and have final and complete authority in and supervision of all matters pertaining to the production of the motion pictures to be made hereunder as above provided and of all other motion pictures which the Pictures Company may make during the term hereof, subject to

the Board of Directors; and he shall also be the advisory head of any business organization which the Companies may at any time establish or maintain in California as distinguished from the production organization.

“SEVENTH: There shall be no person or officer of said Companies of equal or superior authority to that of deMille in any matter pertaining to the production of motion pictures [133] hereunder, and any and all decisions by deMille in all matters of such production shall be complied with and carried out by the Companies subject to the limitations placed upon the number of productions and the cost thereof as herein specified; provided, however, that deMille shall not, without express authority of the President or Chairman of the Board of Pathe, make any contract with any actor, actress, director, artist or employee for a period of more than one year, or at a salary in excess of \$2,500 per week, or acquire any story, story rights, scenario, or other literary composition.

“EIGHTH: Pathe and/or the Pictures Company shall pay to deMille the sum of Two Thousand five hundred (\$2,500) Dollars per week each and every week during the continuation hereof, beginning when this agreement is actually signed and acknowledged.

“NINTH: The Production Company does hereby sell, assign, transfer and set over and relinquish and quit-claim unto the Companies any and all right, title, claim and interest of

any and every kind and nature, which it now has upon and for the services of deMille as a director and/or producer of motion pictures under the terms of the contract of employment heretofore existing between Cecil B. deMille Productions, Inc., and deMille and under the contract dated February 13, 1925, upon the express condition and agreement that in the event this agreement as between the Companies on the one part and the said deMille on the other part, is terminated at any time, the services of deMille as director and producer of motion pictures shall thereupon revert to the said Production Company and that the said Production Company shall thereupon have the right to the said services of deMille from the date of such termination of this agreement, and for a period of five (5) years thereafter, and deMille does hereby agree in the event of such termination of this contract to so render and perform his services as a director and producer of motion pictures for the said Production Company for such period of time, and upon and in accordance with all of the terms and conditions of said contract heretofore in existence between the said deMille and the said Production Company. In consideration of the release and transfer and assignments and of the agreements herein set forth by the said Production Company and of other valuable considerations, the said Pathe and/or Pictures Company do hereby agree to pay to the said Production Company the sum

of [134] Five thousand (\$5,000) per week each and every week beginning at the same time as the payment of the Two thousand five hundred (\$2,500) Dollars weekly to deMille as hereinabove provided and continuing during and throughout the continuation of this agreement and any extension or renewal and until the termination thereof; * * *

* * * * *

“TENTH: DeMille agrees that during the continuance of this agreement he will devote his entire time and attention to the performance of the duties required of him hereunder, except such time as shall be required in connection with his own private investments and customary rest and vacation periods. He shall be entitled to such reasonable vacation periods as he shall deem advisable, consistent with his duties hereunder.

“ELEVENTH: deMille agrees that he will not during the term of this agreement devote any of his time or attention, or render any services in the production, distribution or direction of motion pictures for himself or for any person, firm or corporation other than Pathe and the Pictures Company as herein provided.

“TWELFTH: deMille further agrees that he will not use or permit his name to be used in connection with any motion picture or motion picture enterprise except those covered by this agreement during the term of this agreement, or any extension thereof and except such uses

as are required in connection with pictures heretofore made.

* * * * *

“TWENTIETH: deMille and the Production Company hereby consent to the use of the name of Cecil B. deMille as part of the name of the Pictures Company with the following reservations and upon the express conditions, however, that the use of said name as part of the corporate name shall continue only so long as this agreement continues in force and the said Cecil B. deMille continues in the employment of the said Companies and no longer; and that in the event of the termination of this agreement for any reason whatsoever or of the cessation or of the termination of the employment of the said Cecil B. deMille by the said Companies under the terms hereof, the name of the said Pictures Company shall be changed and the name Cecil B. deMille shall be eliminated as a part thereof and that the changing of [135] said name shall be done immediately upon the cessation of said services or the termination of this agreement; and the Companies and each of them do hereby agree that in the event of the termination of this agreement or the cessation of said services, they will not, nor either of them, have any right whatsoever to any further use of said name, except that the Companies shall have the right to continue to use the said name on and in connection with any and all motion pictures made hereunder.

* * * * *

“TWENTY-SECOND: The name of deMille shall be included in any and all paid publicity and advertising issued by the Companies in connection with each and every of the pictures personally directed and/or supervised by him, and the name of deMille shall be in type of equal size with any other type used therein. deMille shall be advertised and publicized in connection with all productions which he personally directs in a similar manner to the advertising of ‘The Volga Boatman’ directed by him.”

The Pathe contract was terminated by an agreement dated April 18, 1928, which provided in part as follows:

“The Companies shall pay, and as a part of the execution hereof have paid, to the said Productions Company the sum of Fifty Thousand Dollars (\$50,000) in cash, the receipt whereof is hereby acknowledged.

* * * * *

“Pathe acquired certain policies of insurance on the life of deMille, which policies were originally issued at the request of the Famous Players-Lasky Corporation, and are in the following amounts, and with the following companies and bear the following numbers:

New York Life Insurance Company, No. 6070461	\$50,000
Guardian Life Insurance Company, No. 308118	\$50,000
Travellers Insurance Company, No. 343308	\$100,000
New York Life Insurance Company, No. 6070462	\$50,000
Guardian Life Insurance Company, No. 308117	\$50,000
Mutual Life Insurance Company, No. 467669	\$50,000

[136] Each of said policies has a cash surrender value computed according to the terms of said respective policies." (There follow certain alternative methods for handling the cash surrender value of these policies.)

* * * * *

"The companies shall pay to the Productions Company and to deMille the fixed money compensation amounting to a total of Seventy Five Hundred Dollars (\$7500) per week as provided for in said agreement of April 11, 1927, up to the 1st day of May, 1928."

As a part of the arrangement under which the contract between the taxpayer and the Cinema Corporation of America was entered into, the taxpayer obtained an option to buy a studio and organized a corporation known as the Cecil B. deMille Pictures Corporation to which it immediately transferred the aforesaid option, together with certain equipment (acquired upon the termination of prior

contracts), and then exchanged the stock of the Pictures Corporation for stock in the Cinema Corporation of America. When the Cinema contract was terminated the taxpayer exchanged stock in the latter corporation for stock in the Pathe Exchange, Inc.

The taxpayer sold its stock in the Pathe Exchange during the year 1928 and derived a taxable gain upon said sale of \$786,032.97.

In the year 1928 "sound" became a "vital factor" in the moving picture business. All silent equipment was junked over night and a completely new technique had to be developed; everybody had to start from scratch; studios that had cost so much money and all of their equipment were useless. Sound engineers took complete control of the industry. Every studio had to be completely rebuilt after the [137] development of sound; all the stages were useless or valueless; all of the lighting equipment was valueless. The taxpayer did not get some "anticipated profits" on pictures theretofore made, but it received in the case of each picture the amount of its guaranteed profit and sustained a capital loss of only \$20,000.00 on silent equipment. In the case of those pictures which failed to make a profit the capital losses were sustained by the distributors and not by the taxpayer.

Prior to the termination of the Pathe contract in April, 1928, the taxpayer started negotiations with Metro-Goldwyn-Mayer Pictures Corporation with which it executed a contract for financing pictures July 31, 1928. The Metro-Goldwyn-Mayer Pictures

Corporation contract continued in effect beyond the last taxable year (1929) here involved. The contract provided in part as follows:

“WHEREAS, the parties hereto desire to contract for the production of three feature photoplays to be personally directed by Cecil B. DeMille, hereinafter referrer to as ‘Mr. DeMille’, * * *

“WHEREAS, said photoplays are to be produced, financed, and distributed, and the proceeds thereof apportioned subject to the terms and conditions hereinafter more particularly set forth;

* * * * *

“2. The producer represents and warrants that it has a contract with Mr. DeMille for the exclusive services of said Mr. DeMille during the entire period to be required for the production of the photoplays to be produced by the producer hereunder. The producer agrees that until all of the photoplays to be produced hereunder have been completed and delivered, neither the producer nor Mr. DeMille will [138] produce, or render any other services in connection with, any photoplays except those deliverable hereunder, and it further guarantees and warrants that until the completion and delivery of all of the photoplays to be produced hereunder it will not permit the name of Cecil B. DeMille to be announced as the maker, director, or supervisor, or as interested in the production of any motion pictures or photoplays, except those to be produced and financed hereunder and those heretofore pro-

duced, directed, or supervised by him. The producer does hereby specifically agree and guarantee that each of the photoplays to be produced hereunder will be directed solely and entirely by Mr. DeMille personally and that said Mr. DeMille will render such services in connection with the production of each of said photoplays as are usually and customarily performed by a producer and director in the motion picture industry, * * * it is agreed that Mr. deMille shall have and will be given sole and complete authority in any and all matters pertaining to the production of said photoplays, including the selection of the story, cast, and the selection and designing of any and all other things in connection therewith, the direction thereof, the cutting, titling, and assembling thereof, without any right of interference by anyone, but with the right on the part of Louis B. Mayer and Irving G. Thalberg to discuss matters of production with Mr. DeMille. It is distinctly understood and agreed, however, that the producer's and Mr. DeMille's judgment and discretion with reference to all matters and all acts in connection with which they or either of them are given authority under the provisions of this paragraph shall be exercised and done honestly and in good faith.

“3. * * * Mr. DeMille further agrees that at the request of Metro he will permit his voice to be recorded on films and records for the purpose of exploiting and advertising the photoplays to be produced hereunder, and that until all of said photoplays have been completed Metro

shall have the sole and exclusive right (subject only to rights heretofore granted by him with reference to photoplays heretofore produced) to use and reproduce such voice recordings and/or Mr. DeMille's name and photographs and other reproductions of his physical likeness for like purposes and not in connection with the advertising of any matter or thing except other productions made and/or distributed by Metro; and that Metro shall have the further right to make use of and reproduce Mr. DeMille's voice, name and photographs or other reproductions of his physical likeness for like purposes at all times during the exploitation and/or distribution of the photoplays to be directed by him hereunder. * * * [139]

* * * * *

“5. (a) It is understood and agreed that each of the photoplays to be produced hereunder shall be announced and advertised as having been produced by the producer and released through Metro. The name ‘Cecil B. DeMille’ shall be included in any and all paid publicity and advertising issued by Metro, in connection with each and every one of the photoplays produced under the terms hereof, and each such photoplay shall be announced as ‘A Cecil B. DeMille Production’, and in all such paid publicity and advertising, the name of Cecil B. DeMille shall be in type as large in all dimensions as any other type used therein.

* * *

* * * * *

“16. (a) The producer and/or Mr. DeMille agree to assign and/or cause to be assigned to Metro existing policies of insurance covering Mr. DeMille's life to the extent of Two Hundred Fifty Thousand Dollars (\$250,000.00), but as a condition to such assignment Metro shall pay, or cause to be paid, the present cash surrender value of such policies, and in no event shall such policies be so assigned unless it shall be impossible for Metro to procure adequate insurance coverage on Mr. DeMille on a so-called 'term' basis at a lower rate of premium than is provided for in such existing policies. If after the completion of production of the photoplays to be produced hereunder the producer and/or Mr. DeMille should desire to have said existing policies re-assigned to them, or either of them, they shall pay to Metro such cash surrender value as such existing policies will have at the time of such re-assignment. If possible, Metro shall procure life insurance on a term basis covering Mr. DeMille to the extent of Two Hundred Fifty Thousand Dollars (\$250,000.00), and Mr. DeMille, by his acceptance hereof, agrees to assist Metro by doing such act or acts and by signing such applications as may be reasonably necessary to procure such insurance; but such term insurance shall not be procured by Metro unless the cost thereof would be less than the cost of maintaining the existing policies hereinabove

referred to or unless said existing policies are not assigned to Metro. The cost of such insurance for the period covering the production of the photoplays to be produced hereunder shall be charged against the production cost of said photoplays proportionately; and any recovery derived from any policy [140] of insurance herein referred to shall be applied as is provided in paragraph 25 hereof for the application and apportionment of net receipts from the photoplays to be produced hereunder.

“(b) Should Metro desire to obtain life insurance covering Mr. DeMille to the extent of more than Two Hundred Fifty Thousand Dollars (\$250,000.00), it shall have the right to do so and Mr. DeMille, by his acceptance hereof, agrees to assist Metro by submitting to the necessary medical examination and by doing such other act or acts as may be reasonably necessary to procure such insurance. The cost of such excess life insurance procured under the provisions of this subdivision (b) of paragraph 16 shall be borne and paid solely by Metro and shall not be charged to the cost of production of any photoplay. The proceeds of all such policies so procured under the provisions of this subdivision (b) of this paragraph 16 shall belong solely and exclusively to Metro and neither the producer nor Mr. DeMille shall have any right, title, or interest whatsoever in or to such policies or the proceeds thereof.

* * * * *

“(g) All funds thereafter accruing shall be called ‘profits’, and be divided between Metro and the producer as follows:

“(1’) In the case of Class ‘A’ photoplays, sixty per cent (60%) thereof shall be retained by Metro and an amount equal to forty per cent (40%) thereof shall be paid to the producer.

“(2’) In the case of Class ‘B’ photoplays, fifty per cent (50%) thereof shall be retained by Metro and an amount equal to fifty per cent (50%) thereof shall be paid to the producer.

* * * * *

“30. Should Mr. DeMille become incapacitated, by physical or mental disability or illness or otherwise, from rendering the services to be performed by him hereunder, and should such incapacity continue for an aggregate of periods of more than six (6) weeks, or for a continuous period of four (4) weeks after the commencement of photographing of any photoplay, Metro may abandon the production of such [142] photoplay, or, at its option, Metro shall have the right, but not the obligation, to complete such photoplay and to employ another director to direct the same. In any such case of incapacity, if Metro abandons the production of such photoplay the term of this agreement shall be extended for a period equivalent to the period or aggregate of periods of such incapacity, and the photoplay so abandoned shall not

constitute one of the three photoplays herein provided for, except for recoupment purposes, as hereinafter in this paragraph 30 expressly provided. If Metro elect to complete any photoplay and to employ another director to direct the same after such incapacity on the part of Mr. DeMille, then the photoplay so completed by Metro shall be and be deemed to be one of the three (3) photoplays to be produced hereunder. During any period of incapacity on the part of Mr. DeMille, Metro, at its option, may suspend all payment of compensation referred to in paragraph 13 hereof, but upon the resumption by Mr. DeMille of his services hereunder (if Metro shall not have abandoned production as to such photoplay) Metro shall proceed to make payments as herein provided. This agreement may likewise be terminated by Metro at any time in the event of Mr. DeMille's death. * * *

* * * * *

“39. The producer agrees that as a condition precedent to any obligation on the part of Metro hereunder the producer will obtain the signature and due acknowledgment of this agreement by Mr. DeMille at the bottom of this agreement after the word ‘agreed’, and the signature of Mr. DeMille so obtained and affixed hereto shall constitute a binding obligation and agreement on the part of Mr. DeMille to carry out and fulfill each and every obligation on his

part to be carried out and fulfilled pursuant to and as provided in this agreement.”

The contract, last above mentioned, provided also for payments to the taxpayer of \$5,000.00 per week.

The taxpayer's capital stock was held at the end of 1928 and 1929 as follows: [142]

Cecil B. deMille	5,994 shares	
Constance A. deMille (wife)	2,000	“
Mrs. F. E. Calvin (Daughter of Cecil B. deMille)	200	“
Ella King Adams	2	“
Miss Rosson	2	“
A. G. King	2	“
	—	
Total	8,200	“

All of the operations of the partnership and of the taxpayer in the making of pictures were carried on, in turn, under the said contracts with Famous Players-Lasky Corporation, Cinema Corporation of America, Pathe Exchange, Inc., and Metro-Goldwyn-Mayer Pictures Corporation. Although the partnership and the taxpayer corporation were frequently designated “Producer”, all costs of producing and distributing the motion pictures were borne by Famous Players-Lasky Corporation, Cinema Corporation of America, Pathe Exchange, Inc., or Metro-Goldwyn-Mayer Corporation in turn. The taxpayer did not finance any of the pictures produced by it. The entire income of the partnership, during the period of its existence, resulted from

the weekly payments and royalties paid to it by Famous Players-Lasky Corporation for Mr. deMille's personal services and from the investment of those amounts; the entire income of the taxpayer from the date of its incorporation to and including December 31, 1929, resulted from the personal services of Cecil B. deMille as a director, and from the investment of the sums so received.

The taxpayer's compensation, under the sundry contracts, consisted in each instance of a sum of money advanced to it each week, [143] characterized as advances against profits. These sums were not under any circumstances refundable to distributors; they became the property and income of taxpayer when received regardless of what ultimately happened to the picture itself; they did not become charges against costs of pictures. "Profits", for the purpose of computing taxpayer's compensation, in excess of its guaranteed compensation, consisted of the excess of receipts of a picture over its cost (deMille's salary as director was not added to "cost"). Mr. deMille characterized his own salary as "advanced profits" which could not be charged against the negative cost of a picture. The taxpayer received a guaranteed profit in the case of each picture regardless of whether or not it grossed more than cost.

Weekly "advances" to the taxpayer direct, as provided in the several contracts, against agreed percentages of profit, which were not "under any conditions" repayable or refundable to the dis-

tributors, were paid to the taxpayer and reported in its income tax returns as follows: 1924, \$351,629.00 at \$6,731.00 per week for 52 weeks (and a fraction of a week); 1925, \$256,310.00 at \$6,731.00 per week for 10 weeks from Famous Players-Lasky and \$4,500.00 per week for 42 weeks from Cecil B. deMille Pictures Corporation; 1926, \$234,000.00 at \$4,500.00 per week for 52 weeks from Cecil B. deMille Pictures Corporation; 1927, \$248,000.00 at \$4,500.00 per week for 24 weeks and \$5,000.00 per week for 28 weeks; 1928, \$309,652.99 at \$5,000.00 per week for 18 weeks; \$833.35 for 1 day at the rate of \$5,000.00 per [145] week; \$50,000.00 in settlement of cancellation of contract with Pathe Exchange, Inc.; equipment of the value of \$100,000.00 and cash surrender value of insurance policies, \$18,819.64 also received in connection with cancellation of said Pathe Exchange, Inc., contract; and \$5,000.00 per week for 10 weeks under Metro-Goldwyn-Mayer Corporation contract; 1929, \$150,000.00 at \$5,000.00 per week for 30 weeks; aggregating in all \$1,549,591.99. During 1925 to 1929, inclusive, additional payments of profits on the pictures were made to and received by the taxpayer as follows: 1925, \$308,503.03; 1926, \$387,086.06; 1927, \$39,930.68; 1928, \$108,571.73; 1929, \$293,481.77; total for the period \$1,137,573.27. Grand total of profits on pictures for 1924 to 1929, inclusive, \$2,687,165.26.

The following is a summary of the taxpayer's agreed net taxable income in each year as per stipulation; also surplus and net worth at the end of each year adjusted to reflect the correct net income:

Year	Agreed Net Taxable Income	Dividends Paid	Surplus at end of year	Net worth at end of year
1924	\$174,021.18		\$ 309,366.66	\$ 709,366.66
1925	462,380.84	\$ 4,000.00	708,730.14	1,108,730.14
1926	538,773.67	40,000.00	1,136,129.30	1,536,129.30
1927	162,350.95	40,000.00	1,239,403.97	1,639,403.97
1928	908,122.19	56,000.00	1,568,477.56	2,368,477.56
		(Stock dividend	\$400,000.00)	
1929	66,520.42	48,000.00	1,606,515.33	2,406,515.33

IV.

The Commissioner says that in the record and proceedings before the Board of Tax Appeals and in the decisions and final orders of [145] redetermination rendered and entered by the Board of Tax Appeals, manifest errors occurred and intervened to the prejudice of the Commissioner and the Commissioner assigns the following errors and each of them, which he avers occurred in the record, proceedings, decisions and final orders of redetermination and upon which he relies to reverse the said decisions and final orders of redetermination so rendered and entered by the Board of Tax Appeals, to wit:

1. The Board erred as a matter of law in finding and deciding that the taxpayer was not formed nor, during the years 1924 to 1929, inclusive, availed of for the purpose of preventing the imposition of surtaxes upon its shareholders through the medium of permitting its gains and profits to accumulate instead of being divided or distributed.

2. The Board erred as a matter of law in failing and refusing to find and decide that the taxpayer

was formed for the purpose of preventing the imposition of the surtax upon its shareholders through the medium of permitting its gains and profits to accumulate instead of being divided or distributed in each of the years from 1924 to 1929, inclusive.

3. The Board erred as a matter of law in failing and refusing to find and decide that the taxpayer was availed of for the purpose of preventing the imposition of the surtax upon its shareholders through the medium of permitting its gains and profits to accumulate instead of being divided or distributed in each of the years from 1924 to 1929, inclusive. [146]

4. The Board erred as a matter of law in finding and deciding that during the years 1924 to 1929, inclusive, the taxpayer was not a mere holding or investment company.

5. The Board erred a matter of law in failing and refusing to hold and decide that the taxpayer was a mere holding or investment company during the years 1924 to 1929, inclusive.

6. The Board erred as a matter of law in holding and deciding that the taxpayer's gains and profits were not permitted to accumulate beyond the reasonable needs of its business.

7. The Board erred as a matter of law in failing and refusing to find and decide that the words "the business" as used in Section 220 of the Revenue Acts of 1924 and 1926 and in Section 104 of the Revenue Act of 1928 mean the "business" actually carried on at the time or times in question.

8. The Board erred as a matter of law in failing and refusing to find and decide that the surplus of the taxpayer in each of the years from 1924 to 1929, inclusive, was not necessary and was not accumulated to enable the taxpayer to carry on its business in the said years.

9. The Board erred as a matter of law in failing and refusing to hold and decide that the taxpayer's gains and profits were permitted to accumulate beyond the necessary needs of "the business", and that that fact is prima facie evidence of the purpose to escape surtax. [147]

10. The Board erred as a matter of law in failing and refusing to hold and decide that the taxpayer did not overcome the prima facie evidence of the purpose to escape surtax.

11. The Board erred as a matter of law in not according to the Commissioner's determination a presumption of prima facie correctness.

12. The Board erred as a matter of law in treating the issue in controversy as though the burden of proof were upon the Commissioner.

13. The Board erred as a matter of law in holding and deciding that the Commissioner erred in imposing upon the taxpayer the taxes provided by Section 220 of the Revenue Acts of 1924 and 1926 and Section 104 of the Revenue Act of 1928.

14. The Board erred as a matter of law in finding and deciding that the concerted aim of the partners was to accumulate a fund with which they might finance their own productions.

15. The Board erred as a matter of law in finding and deciding that from the organization of the taxpayer throughout the time here material deMille and his associates, as directors of the taxpayer, continued the aim and purpose they had pursued as partners, namely, to save the taxpayer's earnings to accumulate a fund sufficient so that the taxpayer might be able to produce its own pictures.

16. The Board erred as a matter of law in holding and deciding that the taxpayer's accumulation of gains or profits that it might be able to produce its own pictures in the future was within the [148] reasonable needs of the business as actually carried on in the years 1924 to 1929, inclusive.

17. The Board erred as a matter of law in holding and deciding that the "flat" denials of deMille, McCarthy and Fisher that the taxpayer was formed or availed of for the purpose of preventing the imposition of surtaxes upon its shareholders or that it accumulated its profits for that purpose overweighs the evidence of purpose presented by the circumstances.

18. The Board erred as a matter of law in holding and deciding that there is extensive evidence concerning the needs of "the business", the necessity for a large surplus to meet the cost of its own production in event of cancellation of taxpayer's contracts, and concerning the friction and disputes which pointed to imminent cancellation, against which the only protection was that independence assured by an ample reserve.

19. The Board erred as a matter of law in holding and deciding that because of the costs of picture production, the marketing hazards of the business and the risk that the talent and tastes of the producer might not satisfy the public fancy, the surplus accumulated by the taxpayer was not beyond that necessary to its ends.

20. The Board erred as a matter of law in failing and refusing to find and decide that there is no showing here that the accumulation of the gains or profits in question was within the reasonable needs of the business engaged in by the taxpayer during the years 1924 to 1929, inclusive. [149]

21. The Board erred as a matter of law in failing and refusing to hold and decide that Section 220 of the Revenue Acts of 1924 and 1926 and Section 104 of the Revenue Act of 1928 have reference only to "the business" of the taxpayer as actually carried on.

22. The Board erred as a matter of law in failing and refusing to find and decide that the taxpayer's accumulation of gains and profits was beyond the reasonable needs of its business in each of the years from 1924 to 1929, inclusive.

23. The Board erred as a matter of law in failing and refusing to find and decide that the gains and profits of the taxpayer were permitted to accumulate beyond the reasonable needs of its business within the meaning of Section 220 of the Revenue Acts of 1924 and 1926 and Section 104 of the Revenue Act of 1928 in each of the years 1924 to 1929, inclusive.

24. The Board erred as a matter of law in finding and deciding that the taxpayer was not availed of for the purpose of preventing the imposition of sur-tax upon its shareholders, during the years 1924 to 1929, inclusive, through the medium of permitting its gains and profits to accumulate instead of being divided or distributed.

25. The Board erred as a matter of law in that its decision is not supported by the evidence.

26. The Board erred as a matter of law in basing its decision in whole or in part upon incompetent and inadmissible evidence, the receipt of which the respondent objected to and excepted at the time [150]

27. The Board erred in determining that the deficiencies in tax due from the taxpayer are in the amounts of \$8,945.47, \$8,025.88, \$6,245.72, \$2,875.25, \$22,995.36 and \$1,896.88 for the years 1924 to 1929, respectively.

28. The Board erred in not determining that the deficiencies due from the taxpayer are in the amounts of \$95,956.06, \$239,206.30, \$275,632.56, \$84,050.73, \$477,056.45 and \$35,157.09 for the years 1924 to 1929, respectively.

WHEREFORE, The Commissioner petitions that the decisions of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, and that a transcript of the record be prepared in accordance with the law and with the rules of said Court and transmitted to the Clerk of said Court for filing, and that appropriate

action be taken to the end that the errors complained of may be reviewed and corrected by said Court.

(Signed) FRANK J. WIDEMAN

Assistant Attorney General

(Signed) ROBERT H. JACKSON

Assistant General Counsel for
the Bureau of Internal
Revenue

Of Counsel:

MASON B. LEMING,

Special Attorney,

Bureau of Internal Revenue. [151]

United States of America,

District of Columbia—ss.

MASON B. LEMING, being duly sworn, says that he is a Special Attorney for the Bureau of Internal Revenue and as such is duly authorized to verify the foregoing petition for review; that he has read said petition and is familiar with the contents thereof; that said petition is true of his own knowledge except as to the matters herein alleged on information and belief, and as to those matter he believes it to be true.

(Signed) MASON B. LEMING

Sworn and subscribed to before me this 13 day of May, 1935.

(Signed) GEORGE W. KREIS

Notary Public.

My commission expires Nov. 16, 1937.

[Endorsed]: Filed Jul. 1, 1935.

[Title of Court and Cause.]

NOTICE OF FILING PETITION
FOR REVIEW.

To: Cecil B. deMille Productions, Inc.,
c/o Metro-Goldwyn-Mayer Studios,
Culver City, Calif.

A. Calder Mackay, Esq.,
Thomas R. Dempsey, Esq.,
1104 Pacific Mutual Bldg.,
Los Angeles, Calif.

You are hereby notified that the Commissioner of Internal Revenue did, on the 1st day of July, 1935, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the Board heretofore rendered in the above entitled cases. A copy of the *petitioner* for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 1st day of July, 1935.

(Signed) ROBERT H. JACKSON

Assistant General Counsel

for the

Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review

and assignments of errors mentioned therein, is hereby acknowledged this 6th day of July, 1935.

CECIL B. deMILLE PRODUCTIONS, INC.

(By) (Sgd) GLADYS, ROSSON, Sec'y
Respondent on Review

(Sgd) THOMAS R. DEMPSEY

(Sgd) A. CALDER MACKAY

Attorneys for Respondent
on Review.

tco 7-1-35.

[Endorsed]: Filed Jul. 15, 1935. [153]

[Title of Court and Cause.]

STATEMENT OF EVIDENCE.

The following is a statement of evidence in narrative form in the above-entitled cause. This cause came on for hearing before the Honorable Edgar J. Goodrich, Member of the United States Board of Tax Appeals, on December 13, 14, 15 and 16, 1933. A. Calder Mackay appeared on behalf of the petitioner, and Mason B. Leming, R. Bopp, and J. E. Miller, (E. Barrett Prettyman, General Counsel, Bureau of Internal Revenue), appeared on behalf of the respondent.

Before any witness was called to testify the taxpayer offered and there was received in evidence as its Exhibit No. 1 a certified copy of the taxpayer's Articles of Incorporation.

Whereupon,

RUSSELL TREACY

was called as a witness by and on behalf of the petitioner and, having been first duly sworn, was examined and testified as follows:

Direct Examination.

I am a bookkeeper for Cecil B. deMille Productions, Inc. and have been for a number of years. I have the stock certificate book in my hands, of the Cecil B. deMille Productions, Inc. The total number of shares issued by the Cecil B. deMille Productions, Inc. in 1922 was [154] 4,000 shares. 1,800 shares were issued to Mr. deMille, 1,000 shares to Mrs. deMille; 800 shares to Mrs. E. K. Adams; 399 shares to Mr. Neil McCarthy; and one share to John H. Fisher. That record shows some cancellation of stock certificates. That stock issue remained as I have stated it, from 1922 until 1924. There was a change in 1924. The same number of shares remained issued at the end of the year 1924. Mr. McCarthy's stock was sold to Mr. deMille in 1924. That was the only change. At the end of 1924 Mr. deMille owned 2,199 shares. The stockholdings at the end of 1925 was the same. At the end of 1926 Mr. deMille bought Mrs. Adams' stock, 799 shares of her stock, leaving her with one share. At the end of 1927 was the next change in the stock ownership. The records show Mr. deMille owned 2,898 shares at the end of 1927; Mrs. deMille a thousand shares; Miss Rosson one share; Mr. A. G. King,

(Testimony of Russell Treacy.)

one share; and Mrs. F. E. Calvin, 100 shares. The stock was increased in 1928, 8,000 shares. Mr. deMille owned 2,800 shares—that is wrong—Mr. deMille owned 5,994 shares. Mrs. Constance A. deMille owned 2,000 shares. Mrs. F. E. Calvin owned 200 shares. Mrs. E. K. Adams owned 2 shares. Miss Gladys Rosson owned 2 shares. Mr. A. G. King owned 2 shares. The stock in subsequent years was owned in the same proportion, according to these records. In 1930 there was one share sold to Mr. F. E. Calvin. Mr. A. G. King's share in 1930 was sold to Mr. Calvin. I have now in my hand the stock book of the Cecil B. deMille Productions, Inc., from which I have been testifying. I have the books of the Cecil B. deMille Productions, Inc. in the court room from 1924 to 1932, inclusive. Those are the books of [155] account of the corporation. There was prepared under my direction and I checked a statement showing the comparative balance sheets of the Cecil B. deMille Productions, Inc. for those years and also a profit and loss statement and a statement of funds provided and application, and accounts and notes receivable, stocks and bonds, and real estate operations, etc. This is a true copy of the accounts as appears in the books of the Cecil B. deMille Productions, Inc. The one I have in my hand now relates only to the years 1924 to 1929, inclusive. I prepared another document here of the same general tenor relating to the years 1930 to 1932, or had this prepared under my

(Testimony of Russell Treacy.)

direction from the books of the corporation and the statements here have been checked against the books and clearly reflect what the books show.

Whereupon petitioner's counsel offered in evidence the document described by the witness relating to the years 1924 to 1929.

Continuing, the witness testified as follows:

Cross Examination.

This statement that has been offered in evidence, covering the comparative balance sheets and other matters from 1924 to 1929, inclusive, was prepared by me, under my supervision. These figures represent a copy of my books, my records. Referring to the first seven pages of that statement, Exhibit A, that is the comparative balance sheet for 1923 and 1924. Now, counting that sheet and the next six sheets, which would account for the first seven sheets in my statement, all of those sheets are a precise reflection of entries on the books of the corporation. The next is Exhibit B. Exhibit B precisely reflects the entries on the books. Take Exhibit C, statement of funds provided [156] and application of the Cecil B. deMille Productions, Inc., appears in the books of the corporation under income and under expenses.

Continuing the witness testified further on cross-examination as follows:

Q. I will ask you if it is not a fact that that exhibit represents an interpretation of the books?

(Testimony of Russell Treacy.)

A. It is made up from——

Q. (Interposing) It does not reflect entries in the books?

A. It reflects certain entries in my books, certainly.

The MEMBER: What is it? Is it in the nature of a recapitulation?

Mr. MACKAY: That is it. Just explanatory.

Mr. LEMING: I do not know whether it is or not, if your Honor please.

The MEMBER: All right. Find out.

Mr. LEMING: That is the very thing I am trying to find out.

The MEMBER: Ask him.

Mr. LEMING: I have just asked him this, if it was simply an interpretation of the books. Is that right (addressing the witness)?

The WITNESS: Yes.

By Mr. LEMING:

Q. Then it is not simply some part of the entries of the books which you put in?

A. It is part of the entries of the books.

Mr. LEMING: Will you get the books and let us see where it is? If your Honor please, I do not like to take this time. On the other hand, I do not wish to let go into the record a voluminous thing of that sort which contains argumentative figures rather than a mere reflection of what the books show.

(Testimony of Russell Treacy.)

The MEMBER: It is quite right that you should assure yourself of what these items are but I wonder if I give you gentlemen a few minutes if you can not take these books and examine them [157] and satisfy yourself as to the contents of this compilation without taking the time of putting all of this into the record.

Mr. LEMING: I will be glad to do that if we may.

The MEMBER: Very well. Take your witness and your books and get in the corner for a few minutes:

(At this point a recess was taken after which proceedings were resumed as follows:)

Mr. MACKAY: If your Honor please, I neglected to go into great detail in explaining these various schedules at the time I offered the document because I was under the impression that counsel had checked it. I had given him the statement from two weeks ago. I should like to make this statement for the record, that Exhibit C of this proposed document is entitled, "Cecil B. deMille Productions, Inc., statement of funds provided and application." This statement was prepared from the other facts and figures in the rest of the statement. It is our conclusion as to what the funds were applied to, where they went, etc., and I think we have explained——

The MEMBER: (Interposing) Is it your conclusion as to those facts or is it a recapitulation of those facts as shown by the books?

(Testimony of Russell Treacy.)

Mr. MACKAY: It is both, your Honor. I might explain every figure that can be checked against other figures in the statement or in the books because if your Honor will examine that statement you will find that up at the top is the net income, over which there is no particular dispute as to what the books show here, depreciation and amortization, and all of those are in the books and represent book figures. The accrued income represents book figures. Then below that there is the deductions. Below that is the application, where we show increase or decrease in assets, and the decrease or increase in real estate, personal property, life insurance, stocks and bonds, cash funds, notes and accounts receivable, picture rights, and increase or decrease in liabilities; net increase or decrease; and dividends paid; and then total. In a way, it is a summary, but it reflects all of those figures which are on the books with the exception of some that are made up of two figures, as you can well appreciate.

The MEMBER: All right. The document is offered.

Mr. LEMING: As I understood, counsel explained that Exhibit C is not a reflection of the books, but an analysis of the other figures. With that view of it I have no objection to the document as presented by the witness who says he has examined [158] the books and made it up. I would like to say this, so far as checking is concerned, that I

(Testimony of Russell Treacy.)

had no knowledge at all that this document would be offered in evidence until it was presented this morning. It came to me a very few days ago, not disputing Mr. Mackay's statement, but it was not offered to me for checking. I just wanted the record to be straight.

The MEMBER: However that may be, there is no objection to it and the document may be received as Petitioner's Exhibit No. 2.

At this point the taxpayer offered and there was received in evidence as its Exhibit No. 3 a similar statement for the years 1930, 1931 and 1932.

Continuing the witness testified further on cross-examination as follows:

All I testified to was the ownership of the stock of the corporation according to the books. I did not undertake to say who actually owned those shares.

JOHN H. FISHER

was called as a witness by and on behalf of the petitioners and, having been first duly sworn, was examined and testified as follows:

Direct Examination.

I have resided in Pasadena since 1920. I have business connections in Los Angeles and other parts of Southern California. I am a director of the Southern California Edison Company, a cor-

(Testimony of John H. Fisher.)

poration supplying practically all of Southern California with electric light, with 120,000 stockholders, and a billion dollar corporation. I am a director and chairman of the executive committee of the Laguna Land & Water Company, owning quite a good deal of real estate in and around Los Angeles, a two million dollar corporation.

I am a director of a number of other corporations. I am president [159] of the Equitable Investment Corporation, investment counselor, with offices in Hollywood; and I am connected with 6 or 8 other smaller corporations. The capitalization of the Southern California Edison Company was one million or one billion. I have been a director of the Southern California Edison Company twenty-six years. I have been a director of or connected with these other companies in the way I have stated for a number of years. I was an officer or connected in some way with the Cecil B. deMille Productions, Inc. I came to Mr. deMille in the days of the partnership in 1920. The first of October, 1920 I took charge of his personal business and the business of the partnership and at the time the corporation was formed I was elected secretary of the corporation and later general manager. I do not remember the date of the general manager election. I continued in that position until the first of May, 1926. My duties for the corporation in 1923 and 1924 and thereabouts was general manager. I did not have anything to do with the making of

(Testimony of John H. Fisher.)

pictures at that time. I was elected general manager; not with the actual making of pictures. I did in 1923. In 1923 I was called in and Mr. deMille told me that in the obtaining of horses for *The Ten Commandments* the studio had broken down under the pressure of that picture and he asked me if I would take charge of acquiring horses enough to handle that picture.

What I did with respect to the producing of *The Ten Commandments* in 1923 was as follows:

Mr. deMille told me he wanted at least 300 chariots in that picture and it was necessary to obtain horses sufficient for that purpose, and to handle the balance of the needs of the picture. I found immediately that it was practically impossible to find light draft horses. There [160] were plenty of saddle horses, and plenty of heavy stock, but that we would have to get horses and train them to harness of the light harness class. We started in over Southern California with a number of men in the field. We could not find horses of any great number there as the tractors had come in, and we had to send men all over the State of California, and we gradually accumulated our horses and shipped them to the point where they were to be used, north of Santa Barbara, about 80 to 100 miles in the edge of the sand hills and established horse lines and camps and started to train those horses to pull a chariot. It was a very difficult proposition because King Tut's tomb had just been found and we had

(Testimony of John H. Fisher.)

definite information as to the harness and type of chariot used at that time and all the pulling came from the back strap on a yoke on the back of the horse upon his withers, no brace strap or tug or anything of that kind, and we had great difficulty in training those horses. We finally discovered that we could not get enough horses from the farmers to supply our needs, and it occurred to me to try the United States Artillery and I took that up through the Presidio at San Francisco. They finally agreed to let us have an artillery company from the Presidio. That company was to be sent down there in a practice march and was to be established with full camp outfit and everything that would go with a practice march. About that time some of the farmers in California got together, in spite of the fact that they did not have horses to supply us, and wrote direct to the President of the United States, telling him that the United States Artillery was coming in competition with the farmer, and the President instructed the commanding officer at the Presidio to make no move and disregard the practice march without direct consent of the Secretary of [161] War.

We tried to find the Secretary of War and we found that he was on a battleship off the west coast of Mexico, having come through the Canal. We finally succeeded in getting his authority to bring those horses to the camp.

(Testimony of John H. Fisher.)

Then Mr. deMille told me that as long as I had started with the horses, he would like to have me take charge of all the animals in the picture. He wanted as many camels as he could get. We got in touch with every zoo and every circus in the United States. We secured all the camels available in the United States, and then we discovered there was a shipment of camels on the Atlantic Ocean coming from Egypt to this country, and we got in touch with the people owning them and had that shipment of camels sent direct by rail to our camp at Guadalupe.

Also, we had hundreds of cows, burros, mules, geese, ducks, sheep and goats, and they all had to be shipped there and all properly taken care of.

Then Mr. deMille called me in one day and said, "I would like for you to take charge of establishing a camp in the sand hills of Guadalupe to accommodate 2,000 people." We started in to get supplies up there and found that the studio was very much embarrassed for transportation, and, again, he came in and asked me if I would take charge of the transportation.

I might give you briefly the difficulties that we ran into in connection with the transportation situation. We finally found it was advisable to start a truck out of Los Angeles to carry everything necessary not only for the camp but for the sets, about 215 or 220 miles by truck, and the men that drove those trucks were required to make a [162] com-

(Testimony of John H. Fisher.)

plete round trip without stop. They carried their loads to the camp, unloaded them, and returned to Los Angeles and then had 24 to 48 hours off, and then went back on the truck again. In the meantime, another crew of men took the trucks.

We had to construct a great number of very large sphinxes in Los Angeles to line both sides of the approach to the main gate. We sent men out on a motorcycle to measure the clearance of the bridges, and so forth, in order to establish the height.

We started a fleet of trucks out of Los Angeles one day and about ten o'clock one night they reached an underpass of the railroad which had been overlooked by our men and they found that the sphinxes would not go under that. The men were there with these trucks and they could not get anywhere. They had to get to the location. Finally, the driver of the lead truck, who had charge of it, suddenly remembered that there was a bunch of carpenters going north on the night train. He stopped a motorist and got in his car and drove back about 40 miles to Santa Barbara and stopped the night train there long enough to have the carpenters taken out of their berths and give them chance to dress. Then they went into the baggage car and got their tools, and he had the truck take them north and they sawed the heads off the sphinxes and they went under that bridge and they were delivered properly.

(Testimony of John H. Fisher.)

We had to take 2,000 people out of Los Angeles by train and motor buses and get them to that location and house them that night and it necessitated feeding them on the way.

To give you an idea of the difficulties we had, those trucks, after they got within three-quarters of a mile of the location or a half mile of it, had to be pulled by tractors through the sand as the [163] trucks could not make the pull.

Those people had to be provided with tents and floors. They had to have facilities for 2,000 people to take shower baths every night after coming off the location. On account of being in Egypt they were very scantily clothed and they had to have makeup all over their bodies.

We had to establish a complete Kosher kitchen to take care of the Jews, a separate dining room, separate china, separate cooks, to take care of the entire lot of Jews.

We used military tactics in establishing camp. We had a captain in charge of each 100 people and a lieutenant or corporal, so called, in charge of each 20.

On account of the weather conditions it was necessary to get those people to the location very early in the morning. Usually they were at the location by 7 o'clock. They had to be hauled across the sand hills by teams hitched to sleds. We divided in two in the center, one half for men and one half for women. We had remarkably Strict rules re-

(Testimony of John H. Fisher.)

garding the men visiting the women's quarters or the women visiting the men's quarters. Those rules were so strict that one night Mr. and Mrs. Lasky were looking the camp over and they endeavored to get into the women's quarters and were prevented by the officer in charge. Mr. Lasky said "I am Mr. Lasky. You know I am president of this company." The guard said: "I am very sorry, sir, but you cannot go into the women's quarters without permission from Mr. Fisher." Mr. Lasky complimented the officer and went back to his tent.

I think that is, briefly, the picture of the situation there.

I had charge of the equipment taken up there, too, and you can imagine 2,000 people and the conditions they were in, in the moving of [164] the Children of Israel, where they had all their worldly possessions with them.

We came to check up after the completion of the picture and we found that we had lost just two brass bowls, which was the total loss. There were some things destroyed.

I also had charge of the chariots. We had 300 chariots with two horses each. I had charge of getting the chariots on the field. Mr. deMille called me one day from Los Angeles and said, "John, come up here immediately." I drove part of the night to get there and arrived about daylight in the morning and he said, "I can't find out how many chariots I have. The Army Officer in charge of the

(Testimony of John H. Fisher.)

artillery and our Hosea Steelman, who has charge of our horses, a cowpuncher, are fighting all the time, and we can not get a definite count. I have to know how many chariots I have." I told him I would let him know at once. I ordered all the chariots up on the sand hills. The captain and Steelman came to me and said, "You are going to attempt to count those chariots on the sand hills. It can't be done. You can not with this harness make those horses stand still. They are milling all over the place. There is no chance of getting them into any kind of a formation at all."

I knew definitely how many horses I had. Every horse had a brand burned into his hoof. We had a complete record on a card index. I ordered all of them onto the hill, and then I took some men and went through the picket lines and gathered all the harness and all the equipment that was left and I counted the number of sick horses I had and then I knew how many chariots I had on the hill after that because there were no other horses used for any other purpose. We made every [165] man personally responsible for his own team and from then on there was no trouble between the two organizations.

As manager of the Cecil B. deMille Productions, Inc. I had occasion to check the cost of production, and that was part of my duty. Every week we had a cost sheet which came in on my desk. As I recall it, that sheet broke the cost of the picture into 64

(Testimony of John H. Fisher.)

accounts and it was my duty to check all those figures and compare them as a check with other pictures—check averages in other pictures, of all the pictures made by the Lasky Company in the last four or five years. Naturally, I discussed discrepancies and checked those out.

I found out very shortly that the Lasky Company was charging us part of the overhead of departments which they had and which the deMille Productions had. We were charged with our own department in full and also with a portion of their department, which was absolutely wrong. We corrected all of that after having it called to the attention of the auditor of the Lasky Company.

I also discovered through checking on those sheets that we were being charged the full day for a carpenter or an electrician who only worked part of the day on our particular sets. In other words, we had to watch constantly year after year for discrepancies in the amount which was charged to our pictures. The studio's attitude seemed to be anything you did not know what to do with, charge it to the deMille picture.

We tried very hard to break up that thought, and I think succeeded in doing so before we got through with it.

I was responsible for entirely remodeling the entire system of charging overhead to the various pictures. I found the studios [166] were dividing

(Testimony of John H. Fisher.)

their overhead and charging it to the pictures under production.

To illustrate that, there are times in all studies when no picture is actually being shot and when that time occurred there was quite an accumulation of overhead of all the stars, actors and, in fact, every charge in connection with the studio. Then when some pictures did start actual operation in a shooting period that accumulated overhead was charged to those pictures.

The result is that they carried a tremendous burden, which was not justly theirs. We finally succeeded in getting the Lasky Company to change that system, to establish or estimate the number of pictures to be produced, say, in the next four months, and to estimate what the overhead would be for the four months and to allot it in proportion, so then at the end of four months we had an adjustment which straightened the matter out. In that way each picture bore a proper proportion of the overhead of the studio.

As I say, these picture cost sheets—I testified this morning came on my desk every week-end. It was up to me, and part of my duty, to check how those picture cost sheets were arrived at. It was up to me to check how the different items were made up, and very often go to the auditor and break down those various items, follow them out, to assure myself that they were right, and that we were not being overcharged. Then, when I found them

(Testimony of John H. Fisher.)

to be O. K., I O. K.'d those sheets, passed them to Miss Rosson, and then Miss Rosson then drew drafts on New York for the amount of the week's expenditures.

As production manager of the Cecil B. deMille Productions, Inc., I O. K.'d the expenditures made in connection with the making of *The Ten* [167] *Commandments*—

In physical equipment we had certain lighting equipment. We had a large stock of uncut materials in our wardrobes. We had great quantities of costumes that had been made in our own wardrobe. We had quantities of books. We had camera equipment. We had all of the employees of our own wardrobe. We had our scenario department. We had our reading department. We had our head camera man. Then we had our head prop man; we had our trick man; we had a research department in connection with colored films—the coloring of films; we had our own drafting department for the designing of sets; we had the head of our research department, and there were others undoubtedly, but I cannot recall. Then, we had the head electrician; head of the typing department—that was before the days of the spoken picture. That is all I can recall right now.

I think you will realize from what I have told you this morning, that it is necessary to have a man of unusual ability to handle such propositions as we ran into in *The Ten Commandments* and the run of later pictures.

(Testimony of John H. Fisher.)

You can not go out and pick up anybody or pick the average man and bring him in the studio and expect him to carry on under such conditions as we had under *The Ten Commandments*. In any of those conditions; in any of those positions which I have named, they require men of unusual ability. We had film cutters in our organization. That is a very intricate piece of work, and we had a very remarkable woman at the head of that department. It is almost impossible to obtain them because they are all under long-term contracts with other studios. If we had lost our cutters we would have been in a very difficult position. The personnel [168] I have just described here is what I considered as the staff. For the producing of pictures as it occurs to me, do you want me to add additional—the assistant director is an extremely forceful position, and we had a man who had been with the company for a long time, and was trained to it. I was familiar with the real estate holdings of the company—of the Cecil B. deMille Productions, Inc. I will give the Board a general idea of what the real estate holdings consisted in some cases and say whether or not any of those were acquired for the purpose, or for use in the production of pictures.

We owned—we bought various ranches in the Tejunga Canyon, acquiring them one at a time until we eventually acquired the whole strip of that canyon for quite some distance. I should judge it extended for a mile and a half, something of that

(Testimony of John H. Fisher.)

kind, in the canyon, with the idea of using that property for location work where we could establish sets, and have control of it so that we did not need to tear them down, or remove them, or anything of that kind.

We had certain business real estate scattered through Hollywood. One particular piece that we bought, with the idea of building a theatre on it eventually—was a very important property on a corner in the San Fernando Valley, which we bought as acreage, with the idea of subdividing it if we thought the development of Southern California—which we thought at that time would be one of the hot spots of the country—and we did subdivide that property and built a building on the corner. That is all we owned.

Nearly all of the big studios had ranches, because their studios were located on such expensive property, that they could not afford to [169] have a sufficiently large studio. A ranch would permit an outdoor set, and everything was described in that case as being on the lot, when it was out on some vacant lot, where it could be built up and torn down and changed to suit ourselves.

The Ten Commandments was produced by the Cecil B. deMille Productions, Inc. I am familiar with what has been referred to as Laughlin Park. I am also familiar with the fact that the Cecil B. deMille Productions, Inc. has its office in Laughlin Park. The business office of the corporation is

(Testimony of John H. Fisher.)

there. That has been there for many years; but I can not say how many years. I do not remember when we established it as an office. I would have to make just a poor guess as to the number of acres in Laughlin Park because I never figured acreage. I suppose somewhere in the neighborhood of four or five acres. I think it is about nine. It is located in Hollywood. I can describe to the Court what is in the office of the deMille Productions Company in that park. There is Mr. deMille's private office, consisting of quite a large room, which is also used as a production room. It has a good sized entrance hall which is also used as a location of the projection machines. Back of that is Miss Rosson's office which is a very large room. Back of that is the bookkeeping office. I think that gives a pretty general idea of the building. It has a projection screen in it, and has always the last word in projection machines, as Mr. deMille uses that room a great deal. I think I am perfectly safe in saying that ninety-five per cent of the time he is home he runs two types of pictures in that room every evening, not only his own pictures, but pictures of all other companies, in order to study the acting ability of people who are being used by the other [170] companies, and with the thought of finding somebody who can develop into a star, or whom he may be able to use in a future picture.

As a director of that company, and as an officer of that company, I know it to be a fact that the

(Testimony of John H. Fisher.)

pictures exhibited there were those that Mr. deMille supervised and the Productions, Inc. produced; and Mr. deMille would run his pictures there after the third or fourth cutting, something of that kind, and would have all of the principal personnel there, all the heads of the departments, viewing the pictures—and after the picture had been run, he would go around and talk to the different persons present, and get their criticisms.

Mr. deMille would be present, and then the picture would be run again, and finally, when he gets it in about what he thinks is a finished condition, he very often feels the necessity of having an orchestra in order to put the feeling of the music into the pictures as the last phase of it before it is finally passed by him, and is O. K.'d and sent out to have the final prints made. These pictures produced by the deMille organization were exhibited there. They may have been produced in Lasky's, or some other studio; no matter what studio it is, it run there. Mrs. deMille participated in the activities of the company. Mrs. deMille had charge of the real estate department of the company. She visited New York quite frequently to view plays.

She consulted with Mr. deMille and advised on practically all of the actors and actresses that went into the picture. Last night Mr. and Mrs. deMille went to a picture here. I was with them, and going home in a taxicab practically all of their conversation was a discussion of the ability of certain actors

(Testimony of John H. Fisher.)

and actresses that they saw in the Famous Players-Lasky Corporation. That is a sample of the work which she was [171] continually in in regard to the pictures. She was also considerably in touch with the picture costs. It was her duty to help Mr. deMille select stories; select actors and actresses and also help edit the pictures. I can not recall a single instance when I was present, that I was present with those at every running of the deMille pictures—during all the time that I was there—I can not recall a single instance when she was absent—she was not there to look and enjoy the picture. The greater part of the time we had only one projection machine, and therefore there was time when the light was turned on, and immediately Mr. and Mrs. deMille would get together and they would call the assistant director over, and with him they would discuss certain scenes in the picture. They would discuss what was the feeling, and whether this should be cut out or that should be cut out of the picture.

I spoke about the heads of the various departments being present also. They are members of the staff who are actually producing the picture under the direction of Mr. deMille for the production company.

They would come up to the office, view the picture along with Mr. and Mrs. deMille and the other members of the Cecil B. deMille Productions, Inc. I stated that *The Ten Commandments* was produced

(Testimony of John H. Fisher.)

by the Cecil B. deMille Productions, Inc., and I believe I also stated that I was connected with the company as director and manager until about April 1926. During that period the Cecil B. deMille Productions, Inc., was producing pictures. I do not know what they produced during that period. I had so many pictures, so many pictures in my mind in connection with Mr. deMille's work, and before I came to him and after, that I do not think I could specify which pictures they were. [172]

I think I will have to correct one statement. You asked me if she was generally present when these exhibitions, or these pictures were exhibited in the deMille's production office projection room. I answered that I thought I could not recall a time that she was not present. I do not think that is quite correct. I think after we moved into the studio, the deMille Corporation, of which I was not a member, produced one or possibly more pictures.

There was a film vault in the office of the production company. And it had a very extensive library. I was acquainted with Mrs. Ella King Adams. She was a reader in connection with the production of pictures. She got a damp copy of every novel in the world, long before it was on the news stalls, and she had a synopsis made of any that she thought would be of use to Mr. deMille. She also went on to New York, Chicago, to see all the plays running, and reported back to Mr. deMille any that she thought might interest him.

(Testimony of John H. Fisher.)

They had someone assisting Mrs. Adams in that connection. When Mrs. Adams found something that might interest Mr. deMille, she had woman readers who would read it and have a synopsis made. Mrs. Adams also had a writer. Jane Macpherson, and one or two girls under her, who were writing pictures. She and Mrs. Adams read those pictures together.

I attended directors' meetings of the Cecil B. deMille Productions, Inc. a great many of them. They were often held. Sometimes in the studio. Very often in the studio, and then they would adjourn to Mr. deMille's residence in the evening, and very often at the residence. Only in those two places. [173]

I know arguments arose between the Famous Players-Lasky Corporation and the Cecil B. deMille Productions, Inc., over the cost of *The Ten Commandments*. Or the cost of any pictures. We had various arguments with them, as to their method of distributing overhead; also a number of arguments which we finally had to settle by having Mr. Lasky thrash the matter out entirely with our organization, and then with the studio regarding the use of the studio, so that it remained our own department. When I say our own department, I mean the deMille Productions, that is, such departments as the scenario and the advertising—which I do not think was mentioned before—and various departments of that kind.

(Testimony of John H. Fisher.)

We also had a grave situation after the first million dollars had been spent on *The Ten Commandments*. The Lasky Company refused to authorize us to continue beyond that point. In other words, refused to advance any more money, and insisted that we were responsible for any money expended after that. In other words, that we would have to put that money up ourselves to carry on the picture, and it finally reached the place in that discussion where we deemed it advisable to stop work on the picture. After stopping work on the picture for, I think, either one or two days—I am not sure which it was now—they finally authorized us to go ahead and complete the picture at their expense. In other words, they would advance the money to complete the picture. The Famous Players-Lasky Corporation produced the picture. I was always part of the Cecil B. deMille Productions, Inc. The Cecil B. deMille Productions, Inc., owned a studio or took steps to acquire a studio—a moment ago you asked me whether I was always paid by the Cecil B. deMille Productions, Inc. I would like to correct that statement in that [174] I was paid by the partnership before the Productions. Oh, you mean the corporation. I was secretary of the company, that is, deMille Productions, Inc., for quite some time. The minutes book of the Cecil B. deMille Productions, Inc., which you show me is the book that was submitted as the correct record of the Cecil B. deMille Productions, Inc. I

(Testimony of John H. Fisher.)

turn to the minutes dated July 25, 1922. I was present at that meeting. Mr. deMille, Mrs. deMille, Mrs. Adams, Miss McCarthy were present at that meeting. When you notice that that minutes provides that the resolution retained Ella King Adams at \$300 a week, that is the Mrs. Adams that I heretofore mentioned in the Cecil B. deMille Productions, Inc. And also head of the research department. I mean reading.

I did not prepare these particular minutes. Referring to Page 1 of the minutes of July 25, 1922, those minutes correctly set forth the matters that were taken up in the directors' meeting at that time.

At this point there was offered and received as taxpayer's Exhibit No. 4 the minutes of the taxpayer dated July 25, 1922. The minutes of the taxpayer dated April 2, 1923, were offered and received in evidence as taxpayer's Exhibit No. 5.

Continuing the witness testified:

You call attention to the minutes of the meeting of July 16, 1923. I have read the minutes of the meeting of July 6, 1923. I will state who were present at that meeting. Mr. deMille, Mrs. deMille, Mrs. Adams, and myself. Miss McCarthy and Miss Gladys Rosson, the acting secretary, were also present. And the minutes are signed by Mr. deMille, Mrs. deMille, Mrs. Adams and Mr. McCarthy.

There was offered and received in evidence as

(Testimony of John H. Fisher.)

taxpayer's Exhibit [175] No.6 the taxpayer's minutes dated July 16, 1923.

Continuing the witness testified:

The directors in that meeting directed me to make a search for a studio. I did at that time, or subsequent thereto, make an effort to attain a studio for the deMille Productions, Inc. First I investigated an old studio on Glendale Boulevard, and I found that it was not adequate at all for our use, and that there was not even sufficient ground adjoining it to construct what we would need.

Then I investigated the Real Art studio, on Commonwealth Avenue, and I was rather impressed with that studio, that it would accommodate our productions, and so I reported to Mr. deMille on that studio, and the following day he and I went there, and went over the studio and made up our minds that it would not satisfy our requirements.

I also investigated the Sherman Ranch in the San Fernando Valley, and another large piece of property adjoining the ranch, with the idea of building a studio on that property and later on I took Mr. deMille over the Sherman Ranch and let him see not only the location of the studio, but also the distribution of locations on that ranch, for sets, et cetera, and among the oak trees in the valley.

And in that connection Mr. deMille asked me if I had neglected the general lay-out of the studio, and I prepared rough plans on a large piece of paper as a general lay-out of our studio and submitted them to him.

(Testimony of John H. Fisher.)

We did not get to a place of making a definite decision on the question because it depended entirely on whether we did break with the Famous Players-Lasky Corporation, but we had to be prepared in case we did break. [176]

I also employed an engineer to break down picture costs and strike averages on charts, or graphs so that we would have as complete a record as possible of not only our picture costs, but where we had an opportunity, the picture costs of the Lasky studio, and the average costs of such things as floor covering, wall covering, painting, carpentry work, designing and practically everything in connection with the actual making of the pictures.

I first prepared long sheets showing in actual figures and then discovered that that could not be studied in that business, and that they ought to be charted, and I had an engineer work two or three months in charting those picture costs. By picture costs I mean not the total cost of the picture, but by breaking it down in the various items and charting the items and by so charting them striking an average on those, so that we would have as complete a record as possible on all different items in case we had to establish our own studio, so that we could check in on our studio practice and establish what the studio was doing.

I turn to the minutes of July 21, 1924. I identify the signators to those minutes.

(Testimony of John H. Fisher.)

There was offered and received in evidence as taxpayer's Exhibit No. 7 the taxpayer's minutes dated July 21, 1924.

There was offered and received in evidence as petitioner's Exhibit No. 8 the taxpayer's minutes dated September 16, 1924, subject to the proof of the completion of the transactions therein referred to.

There was offered and received in evidence as taxpayer's Exhibit No. 9, over the Commissioner's objection and exception, minutes of the taxpayer of September 29, 1924, in respect of which the [177] Presiding Member rules as follows:

The MEMBER: I do not think I agree with you because you are saying that no matter what activities the corporation may contemplate we should not consider it here as a part of the business of that corporation unless it is carried on to completion. I think I understand what you mean, but I do not quite agree with you.

I will note your exception, and these minutes of September 29, 1924 will be received in evidence and marked "Petitioner's Exhibit No. 9". [178]

There was offered and received in evidence as taxpayer's Exhibit No. 10, over the same objection and exception of the Commissioner, the minutes of the taxpayer of October 6, 1924. There was offered in evidence the taxpayer's minutes of a meeting of December 23, 1924, whereupon the following colloquy occurred:

(Testimony of John H. Fisher.)

The MEMBER: Mr. Mackay, how many of these minutes have you?

Mr. MACKAY: I have quite a few; we run right down to 1931.

The MEMBER: I take it the same general objection is to be made to all the minutes.

Mr. LEMING: Yes, if your Honor please. And I take it from what you have stated, that the same rulings are going to be given. I therefore wonder if we could not bundle them up and make one exhibit.

Mr. MACKAY: Yes, sir.

Mr. LEMING: They are all taken from the records of the company?

Mr. MACKAY: Yes, sir.

The MEMBER: They are all made in the regular course of business?

Mr. MACKAY: That is right.

The MEMBER: And there is no question on that ground?

Mr. MACKAY: That is right.

Mr. LEMING: Since we are going to have it that way, your Honor; that is agreeable to me if I may be permitted at this time to object to the receipt in evidence not only these but those which have gone before, and when that objection is overruled, I shall then make another exception to the entire ruling.

The MEMBER: All right. Why don't we reverse our record so far and instead of running

(Testimony of John H. Fisher.)

these exhibits separately, let us strike out Exhibits 4 to 10 inclusively and take all the minutes and incorporate them into one exhibit, No. 4. You can count them up and let the Clerk know how many there are, and while you are doing that let us take a short recess. [179]

(At this point a recess was taken, after which proceedings were resumed as follows:)

Mr. MACKAY: Your Honor, we have gotten the minutes together, and we find that there are twenty-eight, and we would like to have the right to offer them, for the reason that I have testified.

The MEMBER: Extending from July 25, 1922 until the date of your last meeting?

Mr. MACKAY: Yes, from July 25, 1922 until December 11, 1931.

The MEMBER: It will be received as "Petitioner's Exhibit No. 4".

(The documents referred to were received in evidence and marked "Petitioner's Exhibit No. 4", and made a part of this record.)

Mr. LEMING: And subject to the various objections which have been heretofore mentioned.

The MEMBER: Yes. And to any others which you may now make, if you wish.

Mr. LEMING: They are objected to because, in the first place, they are self-serving declarations; they contain matters which are hearsay; they contain references to matters which have never been carried to completion. For these reasons we object to their receipt.

(Testimony of John H. Fisher.)

The MEMBER: Do you care to be heard?

Mr. MACKAY: Only to this extent, your Honor, that these minutes do not represent all the minutes that have bearing on the case. We have numerous others, but we picked out these to show the activities of our company.

The MEMBER: Inasmuch as these minutes represent the written history of the company, the objection will be overruled and the minutes will be received in evidence.

Mr. LEMING: May an exception be noted?

The MEMBER: An exception will be noted. [180]

Continuing, the witness testified:

My attention was called to certain matters in which I referred to the Ince studio. I will state that as manager of the Cecil B. DeMille Productions, Inc., I carried on negotiations for the acquisition of the Ince studio. I started in negotiating through Mrs. Ince, Mr. Ince had died, and I started negotiations through Mr. Carpenter, who, I think, was executor and also the attorney for the organization. Mrs. Ince personally sat in with Mr. Carpenter and myself at most of the conferences. We started at \$700,000, which I had said he was asking as the selling price, and we gradually worked that price down, as I recall, to \$615,000.

Shortly thereafter Mr. DeMille went east and asked me to continue my negotiations and see what I could do in regard to the studio.

I finally got a verbal offer on it, for the DeMille Productions of \$550,000, and then following that

(Testimony of John H. Fisher.)

we refused to buy it. We first got a verbal offer and that was followed by a written offer to sell for \$500,000. Probably twenty-four hours after that we got a wire from Mr. DeMille—in the meantime I had communicated with him—authorizing us to buy the studio, and as I recall it now, we made a down payment of \$50,000, and entered into a contract to purchase the studio. The contract between Thomas H. Ince Corporation and the DeMille Production Company which you show me is a contract for the studio which I have referred to. My signature is there and I recognize the other signatures. It is my signature on the document and I find a number of places where there are certain things interlined in ink, and those are in my handwriting, initialed by me, and initialed by England Carpenter. And right on the [181] front of that document is a receipt. The receipt is signed by Thomas H. Ince, Inc., by Eleanor K. Ince, under date of April 3, 1925.

The document so identified by the witness was offered and received in evidence as taxpayer's Exhibit No. 5.

There was offered and received in evidence as taxpayer's Exhibit No. 6 a contract dated November 16, 1923 between the Famous Players-Lasky Corporation and the Cecil B. DeMille Productions, Inc.

Continuing, on direct testimony, the witness said: You call my attention to Exhibit 2, "Petitioner's

(Testimony of John H. Fisher.)

Exhibit No. 2", and particularly to the surplus for the year, showing in surplus at the end of December 31, 1924, \$258,337.26. The minutes that have been offered in evidence show that I was a director of the Cecil B. DeMille Productions, Inc., during the year 1924, and 1925, and up to 1926, when I resigned.

I will state to this Court why all of that surplus earnings of \$258,000 was not distributed at the end of 1924—because we were constantly finding ourselves in very uncertain situations. Our contract with the Famous Players-Lasky Corporation could be cancelled under the terms of the contract by either side in a short time and we might find ourselves at any period during the term of that contract in a position where we would have to go out and buy a studio and equip it and make our own pictures. Therefore, we always should find ourselves in a very substantial position as far as a surplus was concerned. When I say "make our own pictures", I mean finance our own pictures.

I simply owned on share in the Cecil B. DeMille Productions, Inc. qualifying me as a director. I do not own any now. I surrendered it when I resigned. I am not connected in any way with the company and have not been [182] since May 1, 1926. I am not in any way connected with Mr. DeMille, and there is no relationship between me and Mr. DeMille or with Mrs. DeMille through relatives.

(Testimony of John H. Fisher.)

The surplus existing at December 31, 1925 shows \$659,037.14 on petitioner's Exhibit No. 2. Taking into consideration the matter that I have testified to here now, the cost of producing, and having in mind particularly the contractual relationship that existed between the DeMille Productions, Inc. and the Famous Players-Lasky Corporation, in its financing of the company, the cost of studio and so forth, I do not consider the sum of \$659,000 as an unreasonable surplus for the Cecil B. DeMille Productions, Inc. on December 1, 1925. I think the surplus was not as large as it should have been at that time. We required a larger surplus. You ask me if I have any idea—can I tell the Court what surplus would be reasonable under the circumstances for that corporation. I would like you to tell me what you mean by that expression "like circumstances". Do you mean if we had to buy a studio and finance it. Your answer being "yes", I would estimate that at the very minimum we would have required \$4,000,000. The reason I say \$4,000,000 is that it shows on the face of it that we needed a studio costing \$500,000. That we estimated at that time that it would cost at least \$100,000 to put that studio in condition for our use. And we later found that it was necessary to spend considerably more money than that on the studio.

We have shown that The Ten Commandments picture cost \$1,500,000. We would not get any return for that picture even if it was released for a

(Testimony of John H. Fisher.)

number of months. In the meantime we would not be idle, we would have to carry on, and start another picture, and we would have to have capital to pay for that as we went along. You can not get started, with people of all [183] types to work in the picture, to work for nothing. You have got to pay as you go and you have got \$200,000 to start with to work on the picture. I mean \$2,000,000 instead of \$200,000. We have got to carry on on another picture before we get any money out of that, so that I do not see how we could work on less than \$4,000,000, and I think we would be running pretty close to the danger line there. I would have felt much safer if we had started financing our own pictures if we would have had \$10,000,000.

Whereupon the witness was asked:

“Q. Mr. Fisher, I will ask you if you or any other director had any intention during the time that you were a director of that company, to retain its earnings so that Mr. DeMille, Mrs. DeMille or any of the other stockholders of that corporation would avoid the payment of sur-taxes on dividends that might be declared.

The question was objected to. The objection was overruled. The Commissioner excepted and the witness continuing testified:

I never heard the matter discussed. It never occurred to me and so far as I know it never occurred to any member of the board in any way. The only reason we built up a surplus, and the

(Testimony of John H. Fisher.)

only discussion we had regarding the surplus was at the time we declared the dividends, and at that time we all had the same feeling that it was necessary to build up our surplus to protect our business. My answer to that question is "no".

Continuing, the witness testified:

Cross Examination.

I did not at any time own more than one share of stock in the corporation. I think I acquired that share at the time, or very shortly after the date of [184] incorporation. The incorporation was formed, as I recall it, by our attorney and his associates were appointed originally as directors in order to carry through the formation of the company. They were later resigned one at a time and the directorate was filled by the men who were to be permanent directors of the company, and at that time a share of the stock was transferred to me. I did not purchase that one share, it was only a qualifying share. It was issued without any cost to me, so that when I resigned from the corporation board of directors, that share of stock was transferred back to—I think to Mr. DeMille. I think it was his stock, but I am not positive, and without compensation to me. In other words, the share had actually been owned all the time by Mr. DeMille. A. G. King was not a director of the company during the same time that I was there as director. He was not a stockholder at the time I was associated with

(Testimony of John H. Fisher.)

the company. I might qualify the statement. He might have been for a few days. Mr. King took my position. He came to the organization some thirty or forty days before, and he worked with me, and it may be a share of stock was transferred to him before my share was surrendered. I do not know anything about that. In testifying in regard to the weekly cost sheets, I said they were placed on my desk each week. I did not check them and pass them on to Miss Rossan; that is not the procedure. The cost sheet was accompanied by a bill for a given amount of money, as shown on the cost sheet. The cost sheet remained on my desk, and after I had checked it I either O. K.'d the bill, and then passed it—that is, the bill—on to Miss Rossan, and she drew drafts on New York. Those drafts drawn were drawn on Famous Players-Lasky Corporation. [185]

During the time that I was connected with the company, all of the pictures that were made by Productions about which I have testified, were made under contract with that same company. I have mentioned other pictures in my testimony. All the pictures which were made by the Cecil B. DeMille Productions, Inc. were not made under contract with the Famous Players-Lasky Corporation, because after we broke with the Lasky Company, then there was a different situation. Then they were made under the DeMille Pictures Corporation. I had no connection with the DeMille

(Testimony of John H. Fisher.)

Pictures Corporation. I cannot answer the question with whom the contract was made. The *Ten Commandments* was made under the general contract between our organization and the Famous Players-Lasky Corporation.

The taxpayer had more to do than serve in the capacity of a director in the production of a picture. I should say without question that he did. If Mr. DeMille had simply been a director, he would have had only our organization behind it and he would not have had to appear in the organization of the Famous Players-Lasky Corporation with all their department heads, which was an entirely different situation; and I feel perfectly justified in saying they did not have department heads capable of carrying through that picture. I have already testified that Mr. DeMille called me in and said that the Famous Players-Lasky Corporation had broken down under the strain of that picture despite the fact that Mr. DeMille had in his own organization a great many department heads. What this taxpayer furnished was personnel and some equipment. The principal things he furnished was personnel. The compensation of the taxpayer for its work in producing one of those pictures was not on a cost-plus basis or on a flat sum. We received advances each week, which were to be applied to [186] the amount that we were allotted to make this picture, and the—it is quite a while ago—I will have to think it over—we were operating under contract by the Famous Players-Lasky

(Testimony of John H. Fisher.)

Corporation, by which we got a percentage of the receipts of the picture. That was a written contract, and that was offered here in evidence. That contract fully describes all the compensations that the taxpayer was to get.

At this point, Mr. Mackay, counsel for the taxpayer, said he did not think the contract, under which *The Ten Commandments* was made, was in evidence.

Whereupon the witness testified on redirect examination as follows (by Mr. Mackay):

I am acquainted with Mr. Lasky's signature. I will state that is Mr. Lasky's signature as vice-president of the Famous Players-Lasky Corporation, and the interlining is initialed by Mr. Lasky. That is the contract. This is the contract under which the Cecil B. DeMille Productions, Inc. produced pictures during the time that I was connected with it. Up until the date of the contract which is now in evidence, in 1923.

Whereupon there was offered and received in evidence as taxpayer's Exhibit No. 7, the contract last identified by the witness.

Resuming cross-examination, by Mr. Leming, the witness testified as follows:

"Petitioner's Exhibit No. 7" is the contract under which *The Ten Commandments* was made. The terms of that contract—represent the proceeds which were received by the taxpayer for the making of that picture. There were no changes made in this contract one way or the other that I recall. I was

(Testimony of John H. Fisher.)

instructed to make certain investigations with the idea of purchasing [187] some real estate on which to build a theatre building. The theatre building was never completed; it was started, but it was never completed. The foundations were put in. That was on Vine Street, between Selma and Hollywood Boulevard. I could not say positively in what year that was. I would say either 1924 or 1925. I cannot answer when the corporation acquired the home site or property on which Mr. DeMille makes his residence. I do not know the date—I cannot answer that question; I mean I do not recall. The corporation owned some property while I was connected with it. I was connected with it from about 1922—well, from its incorporation up until May, 1926; May first. The corporation had some source of income so long as I was connected with it outside of its business of producing pictures under the contract that I referred to consisting of dividends, sale of lemons, the rental from real estate, the sale of real estate, of course—oil—I am not sure about the oil production. I think it started—I think we did have some oil production after the incorporation of the company. I am not positive of the date that we stopped getting our oil production. I mean the company owned land on which oil had been or was producing. Well, we did not own the land. We leased the land and it had wells on it. The corporation drilled the wells. I am not positive of that, but I think we did. I am not sure who

(Testimony of John H. Fisher.)

paid those bills. It is a long time past. Those wells—I think the first were drilled way back in 1919, I think. That was before the corporation came into existence; it was a number of years ago. I mean to say that that well was owned previously by the partnership, either by the partnership or Mr. DeMille personally. I am not positive of that. I know when I joined the partnership in 1920 that we had a production. I spoke of dividends as a source of income to the [188] corporation, stocks owned by the corporation. That is, sundry stocks of various corporations. The sale of lemons came about through the buying of the property in the Tejunga Canyon, where we expected to use the land for studio purposes. There were lemons and some oranges there.

The company made substantial gains in the sale of real estate and in the purchase and sale of stocks and bonds. It had no other source of income that I did not mention as I recall. I do not think so. I do know something about Mr. DeMille's personal investments. In the years 1924 to 1928, I do not believe I do. I do not think I know anything about what his personal investments were in the year 1924. I could not mention anything that I am sure that he was personally interested in. I know nothing about Mr. DeMille's private investments after I left him in May, 1926. I am not positive that my answer is correct, that I knew nothing of his investments prior to 1924, because in some cases

(Testimony of John H. Fisher.)

there he owned property which was later transferred or sold to the Productions after I arrived there. For instance, I think he owned Laughlin Park some time before my association with him. Just when that property was transferred to the corporation, I could not recall. It may be that he had some investments of that type at that time. I do not remember about when that was transferred to the corporation. The original purchases up in the Tejunga Canyon, one or two of them might have been in his name before the corporation acquired them. I cannot say that I could mention anything particularly that belonged to him as an individual. I have no knowledge at all of any individual holdings of Mr. DeMille except those which I have mentioned. I did not in the year 1924 have any personal knowledge of the amount of Mr. DeMille's personal income. Remember, you will have [189] to stop in May, 1926, because I do not go beyond that far. I did not know anything about his personal income in the years 1924, 1925, and up to the date I quit in 1926. I know nothing about his personal income since the time that I left the corporation. When I was with the corporation I did not understand that Mr. and Mrs. DeMille owned the corporation in its entirety, they owned it entirely. I knew that other people were—Mrs. Adams—Ella King Adams, and Neal S. McCarthy. I think that Mr. McCarthy came in at the time of the incorporation. I am not positive of the date of

(Testimony of John H. Fisher.)

Mrs. Adams—I think it was just at that time or very shortly thereafter.

Whereupon, the witness was asked:

Q. Do you know, Mr. Fisher, that at the time they came into the picture, they executed options in favor of Mr. DeMille for a resale to him of such interest as they had for the amount that they had paid for it?

The question was objected to by the taxpayer on the ground it was incompetent, irrelevant, and improper, and not proper cross-examination. The objection was overruled. The taxpayer excepted and the witness continuing testified:

I have no knowledge of any such agreement either verbal or written.

The witness, continuing, testified as follows in response to questions propounded by the Presiding Member:

Q. As I understand you, you said that the Productions Company made those pictures and received from Lasky each week advances to cover the cost of the production. Now, how were those advances treated? Were they charged to you by Lasky, and did they become a debt on DeMille Productions to Lasky?

A. I would not say that I can answer that question because I have no idea how the Lasky Company handled their books. [190]

Q. Of course you can not, but how did the DeMille Company handle its books? Did you treat it as owing Lasky?

(Testimony of John H. Fisher.)

A. No, sir.

Q. Under the contract then the amount did not become a debt on DeMille Corporation?

A. No, sir.

Q. They were simply advances for the making of pictures, and whatever the picture cost, that the Lasky Company furnished within whatever limit might have been agreed upon by contract?

A. Yes, sir.

Q. So that when the picture was completed this petitioner had put up none of its own money as a part of the cost of production?

A. No, sir.

Q. It had been reimbursed for everything it had spent in the making of that picture?

A. Yes, sir.

Q. And then when the pictures were exhibited, from the earnings?

A. Yes, sir.

Q. This petitioner received a certain percentage as compensation for its work in making the picture?

A. Right.

On redirect examination, by Mr. Mackay, the witness continuing, testified: The salaries of Mr. DeMille and Miss Rossan did not have anything to do with the picture cost. I testified that Mr. DeMille contributed all his time and Miss Adams and the rest, all their time in the making of the picture. And when I say that the cost of productions was not paid, I mean the cost of the negative itself. Everything that went to the negative cost. [191]

(Testimony of John H. Fisher.)

Continuing, the witness testified as follows in response to questions propounded by the Presiding Member:

Q. Was the overhead operating expenses of the company billed to Lasky?

A. No, sir; our wardrobe, for instance—we had our absolutely entire wardrobe, and the cost of that wardrobe was picked up and charged to the picture, because that was actually part of the cost of the negative, but the salaries of our own personal organization had nothing to do with Lasky in the making of pictures.

Q. And you made no charge for the overhead of your organization against Lasky, which you would be reimbursed for?

A. No, sir.

Q. That included the salaries paid to Mr. DeMille—paid by Productions?

A. Yes, sir.

Continuing, the witness testified on re-cross examination:

The principal sources of income of the taxpayer were not its fees, and compensation for making pictures; it was from the profits that he obtained it from the receipts of the picture. These weekly advances did not simply cover the cost of making the picture, exclusive of my salary or the other officers' salaries of the corporation; the advances Mr. DeMille received were advances on his part of the royalty, his percentage from the income of the picture. I have no change to make in my answer to his Honor's question.

(Testimony of John H. Fisher.)

Continuing the witness testified on redirect examination: A moment ago I said that the advances received by Mr. DeMille—I meant DeMille, Inc.

RUSSELL TREACY

was recalled as a witness by and on behalf of the petitioners, and having been previously duly sworn, was examined and testified as follows: [192]

I testified the books of the corporation were in the court room. At your (Mr. Mackay's) request I have prepared a statement showing the salaries that were paid to Mr. and Mrs. DeMille for the years 1924 to 1929, inclusive. I have that statement in my hand. In 1923, Mr. DeMille was paid \$91,000.00; 1924, \$78,000.00; 1925, \$15,000.00; 1926, \$6,166.66; 1927, \$26,000.00; 1928, \$110,583.35; 1929, \$130,500.00; 1930, \$95,500.00; 1931, \$25,900.00. In 1923, Mrs. DeMille received \$20,800.00; 1924, \$24,700.00; 1925, \$36,400.00; 1926, \$36,400.00; 1927, \$43,900.00; 1928, \$44,200.00; 1929, \$44,200.00; 1930, \$43,250.00; 1931, \$28,450.00; and 1932, \$24,700.00.

I also prepared a list showing dividends paid to Mr. and Mrs. DeMille separately. In 1924, Mr. DeMille received \$2,199.00; Mrs. DeMille, \$1,000.00; Mrs. E. K. Adams, \$800.00; Mr. John Fisher, \$1.00.

In 1925, Mr. DeMille received \$2,198.00; Mrs. DeMille, \$1,000.00; Mrs. E. K. Adams, \$800.00; Mr. John Fisher, \$1.00; Miss Gladys Rosson, \$1.00.

In 1926, Mr. DeMille received \$29,970.00; Mrs. C. A. DeMille received \$10,000.00; Mrs. E. K. Adams, \$10.00; Mr. John Fisher, \$10.00; Miss Gladys Rosson, \$10.00.

(Testimony of Russell Treacy.)

In 1927, Mr. DeMille received 29,970.00; Mrs. DeMille, \$10,000.00; Mrs. Adams, \$10.00; Mr. A. G. King, \$10.00; Miss Gladys Rosson, \$10.00.

In 1928, Mr. DeMille received \$40,558.00; Mrs. DeMille, \$14,000.00; Mrs. Adams, \$14.00; Mr. A. G. King, \$14.00; Miss Gladys Rosson, \$14.00.

In 1929, Mr. DeMille received \$34,764.00; Mrs. C. A. DeMille, \$12,000.00; Mrs. Adams, \$12.00; Mr. A. G. King, \$12.00; Miss Gladys Rosson, \$12.00; and Mrs. F. E. Calvin, \$1,200.00. [193]

In the year previous, in 1928, Mrs. F. E. Calvin also received \$1,400.00. The last was 1929. I went back and made a correction in 1928. In 1930, Mr. DeMille received \$30,418.50; Mrs. C. A. DeMille, \$10,500.00; Mrs. E. K. Adams, \$9.75; Mr. A. G. King, \$10.50; Mrs. Gladys Rosson, \$10.50; Mrs. F. E. Calvin, \$1,050.00; Mr. F. E. Calvin, 75 cents.

There was then offered and received in evidence, as taxpayer's Exhibit No. 8, the income tax returns filed by Cecil B. DeMille for the years 1924 to 1930, inclusive.

NEIL S. McCARTHY

was called as a witness by and on behalf of the petitioners and after having been first duly sworn was examined and testified as follows:

Direct Examination

By Mr. MACKAY:

My name is Neil S. McCarthy and I am a practicing lawyer in Los Angeles. I have been practicing

(Testimony of Neil S. McCarthy.)

law in Los Angeles twenty-three years. During that time I have represented several large institutions out there, such as banks, and so forth. I was attorney for the Commercial-National Bank for some approximately 10 years until we sold it to the Bank of America. I was director of the bank. I then became a member of the Advisory Board of the Bank of America and represented several oil companies and several motion picture companies; a great many motion picture people, and different commercial establishments in the city, such as Desmonds. I have also represented the Cecil B. deMille Productions, Inc. since its organization. I am familiar with the contract between the Famous Players-Lasky Company, dated November 16, 1923, and that company's Exhibit No. 6 which you now [194] hand me. I think I should say that I am still attorney for Cecil B. deMille Productions at this time. I negotiated that contract. I know there was friction developed between the Famous Players-Lasky Corporation and Cecil B. deMille Productions, Inc. over the performance of that contract. I will state to the Board just what that friction was. There was in each contract—this is the contract of 1923, which was subsequent to the production of *The Ten Commandments*. The friction had existed for sometime but in *The Ten Commandments* it reached the worst proportions that I think it arrived at at any time.

The picture itself cost more money than the original estimates called for and more than they had agreed to pay. When the amount they had agreed

(Testimony of Neil S. McCarthy.)

to pay had been exceeded, they then notified me that they would expect us to pay the remaining cost, under the contract, we were obligated to do, because they agreed only to advance up to a certain amount. However, the excessive cost I felt was due to the failure on the part of their estimating department in the original estimates of cost of the picture to correctly make those estimates. I had been in New York during the making of the early part of the picture, that is, what is called the Guadalupe set, where most of the Biblical portions of the picture were made, and had returned home and I went to the studio to talk to Mr. deMille. At that time I recall he was directing the scene of the Golden Calf, and when he saw me come on the set he stopped production immediately and took me off to one side and smiling and very pleased stated to me that they had made the Guadalupe set and the Guadalupe location for far less than the anticipated cost, that instead of using the amount of equipment, and so [195] forth, that had been anticipated and estimated, and instead of taking the length of time that had been estimated, he had been able to make it in a much shorter period of time and, as a consequence, had made it for much less money.

While we were sitting there discussing it Mr. Fisher came over to us and he was very plainly agitated, and he said a terrible thing, apparently, had happened, that the Lasky estimating department had found that their figures were wrong and that instead of the set as they had originally planned

(Testimony of Neil S. McCarthy.)

it costing only a certain amount of money, their figures were so far out of line that it cost a great deal more, which threw the cost far in excess of what had been anticipated.

I, consequently, took the position with Famous Players that we were not obligated under the contract to pay that additional cost. At that time it was estimated the additional cost would be approximately \$500,000.00 which we, as I say, under the contract, were obligated to advance and pay not as a direct responsibility but they had only agreed to lend us a certain amount of money for the production of the picture. To complete it it would have required an additional \$500,000.00. At first they refused to accept our analysis of it and, as a consequence we stopped production for a couple of days until we could thresh the matter out, and after I had explained to the heads of the organization the reason for our position they agreed with me and agreed to advance the additional cost.

That left a bad feeling, unfortunately, and from that time on the friction continued to grow more and more and during the remainder of the period until 1924, and in 1924 the matter, apparently, began to reach a climax. [196]

They were continuously interfering with the type of picture which we wanted to make. Mr. deMille wanted to make certain types of pictures and we felt that he was right. I was at that time a member of the Board and I had been associated with the business since 1915 and I felt that I knew something

(Testimony of Neil S. McCarthy.)

about it. They insisted upon trying to have us produce different types of pictures than we wanted to produce. As a consequence, we were not in a position to do what we wanted to do, to make the type of picture we felt would go with the public. If I may describe it in this way, their attitude seemed to be when a picture was made that appealed to the public that we should make that type of picture. Our position was that we should anticipate what the public wanted and make that type of picture ahead of the other studios. Instead of being a follower by making the same type of picture at the same time, which is still done in the industry, to anticipate, and we would enhance our reputation and our money, as well. They never could agree on that point.

As a consequence, in 1924 I felt that we were getting to the point where the relations would be broken and I think they were, in the early part of 1925. They had the option under the contract of terminating it at any time on either 30 or 60 days' notice, and on January 9, 1925, they served that notice on us.

They served that notice on us on January 9, 1925, terminating the relations between us, and refused to distribute any more pictures. The contract I spoke about is the contract that I have before me, known as Exhibit No. 6. That is the one made in 1923. That provides, among other things, upon the termination of the contract, that the deMille Productions, Inc. were to get certain [197] equipment up to \$50,000 and also all equipment which had been charged

(Testimony of Neil S. McCarthy.)

against a particular picture. I think, furthermore, it provided that the staff which Mr. deMille organized, the Cecil B. deMille organization, was to come back to the Productions, and I think it also provided that the Productions were to get two developed actors or actresses, and also two actors or two actresses being developed. At the termination of the contract the Productions got the organization back. Those things were really our property. We produced the pictures. They simply advanced the money, so whatever we spent the money for was ours.

In the early periods of the relationship of the corporation they wanted to change that and they felt that there were certain things they wanted, and the division was made between them and Mr. deMille in which he agreed they could have certain articles which we purchased in connection with the pictures, and we retain certain of them, and provided in the event of the termination of the contract these things which we ourselves had acquired, together with certain of the artists which we were developing, which were carried on the payroll in their name, should be ours. We required them to carry these people on the payroll in their name and to put provisions in their contract that their services should be assigned to us because of the fact that between pictures if we had not done that we would have had to pay them out of our own pocket if we were not able to secure employment for them elsewhere, whereas by making them carry them on their payroll that obligated them to secure employment for them. I felt they would not

(Testimony of Neil S. McCarthy.)

give employment, probably, if they did not have to pay them anyway, and we required them to carry them on their payroll, but also provided in the [198] contract that their services could be assigned to us, and provided for the transfer of those contracts to us in the event the contract was terminated. We had a complete producing organization which we were using in the making of these pictures. It was a matter of the best way from an economical viewpoint, so far as we were concerned, of carrying that organization on that we were required to carry. We put ourselves in the position that if anything did happen it was still ours. At the termination of the contract the personnel I have described came onto the payrolls of the Productions. I think that amounted to approximately per week, outside of the stars, somewhere over \$3,000.00. That is my recollection, that our weekly payroll outside of the artists, was somewhere over \$3,000.00 as soon as the contract was terminated. The artists that were acquired were Rod La Roque, who at that time we had developed into one of the real stars of the business, and Leatrice Joy, who also was an outstanding star at that time. I do not think we got Bebe Daniels—Vera Reynolds. I can not recall whether we took Bill Boyd at that time or afterward. I think Bill Boyd, too. I can not remember the others offhand. I have been here and heard the testimony. I heard the testimony of Mr. Fisher regarding the cost study and also the minutes referring to the acquisition of the Ince Studios. The cancellation notice, as I recall it,

(Testimony of Neil S. McCarthy.)

of the Famous Players contract, was served on July 9, 1925; that is the contract executed in 1923. After the termination of the Famous Players Lasky contract in the early part of 1925.

Mr. deMille was in New York. I was in New York. We sat about trying to make new arrangements for distribution. We finally concluded [199] negotiations with a group which at that time had the Producers Distributing Corporation, which was distributing motion pictures at that time, and which needed product, and we needed a distributing organization. We concluded arrangements with them in New York City. The Cinema Corporation of America was the organization which was formed at that time and with which the transaction was finally closed. The deMille Productions assigned the contract to furnish the Ince Studio and the equipment acquired in connection with the Ince Studio to the Cecil B. deMille Pictures Corporation. For all the stock together with certain other property and for all the stocks of the Cecil B. De Mille Pictures Corporation and the Cecil B. de Mille Pictures Corporation stock was transferred to the Cinema Corporation of America for certain shares of common stock of the Cinema Corporation and certain shares of preferred stock. We each paid in or were required to pay in in connection with the organization of the Cinema Corporation \$50,000.00 in cash. We did that by paying the \$50,000.00 in cash on the studio—I can not recall whether that was all on the studio—but, in any event, we paid the \$50,000.00

(Testimony of Neil S. McCarthy.)

either by paying \$40,000.00 on the studio and \$10,000.00 additional or paying \$50,000.00 on the studio.

The other group also turned in the Producers Distributing Corporation and took common stock and preferred stock for the Producers Distributing Corporation. The Producers Distributing Corporation was owned by a corporation known as the W. W. Hodkinson Corporation and they turned in the stock of the W. W. Hodkinson Corporation to Cinema and took out an equal amount of common stock with ours and then a much larger amount [200] of preferred stock for which they paid cash. They were then to pay in additional amounts for the production of pictures and get the preferred stock for that. Much of the preferred stock they took at that time was for indebtedness owing to them, money which the Hodkinson Company owed to certain other people, so they insisted upon getting preferred stock for that indebtedness, claiming they had to expend the money and they were entitled to preferred stock for it.

The contract dated February 13, 1925, which you show me, I believe that is the agreement which was drawn between the Cinema Corporation of America and the Cecil B. de Mille Pictures Corporation, the Cecil B. de Mille Productions, Inc., and Cecil B. de Mille at that time. That is the signed original. I can identify Mr. de Mille's signature. That is Mr. Munroe's signature for the Cinema Corporation of America, and Mr. Richards, I think I was present when this was signed. That is my handwriting.

(Testimony of Neil S. McCarthy.)

There was then offered and received in evidence as taxpayer's Exhibit No. 9, the contract last above described by the witness.

The terms and years of that contract were five, that is my recollection but I will check it up for sure (after examining contract). My recollection is it was five years. This copy—there are several exhibits attached to the original contract which are not attached to this copy. They are a part of the contract. I was just calling it to your attention. My recollection is that those—one of those documents is the form according to which we were required to furnish them estimates of what the pictures would cost, a makeup of that estimated cost. [201]

After the execution of that contract in February, 1925, dispute arose between the Cecil B. de Mille Productions, Inc. and the Cinema Corporation of America and the rest named in the contract. Disputes started almost immediately. They were to put in \$500,000.00 and take \$500,000.00 of preferred stock, according to my recollection. It was the first money we were to have for production. They put in the \$500,000.00 but there was an indebtedness owing to other companies and instead of leaving that \$500,000.00 for production there was \$250,000.00 available for production and the other \$250,000.00, approximately, they paid back to one of their other organizations or affiliated organization on account of that indebtedness. So we had quite a dispute about that. At that time we had to pay them or guarantee, as I recall it, the payment of the payrolls at the

(Testimony of Neil S. McCarthy.)

studio because there were not sufficient funds to pay them. That was the first difficulty that arose. We finally got that ironed out somewhat.

Then, later, one of the men affiliated with the company and with the people who were supposed to be advancing this money, stated to us very calmly that there would be no more money forthcoming from them, that other arrangements would have to be made for the money for the pictures. I think that must have been approximately six months after we started; possibly not that long; maybe 5 months. In the summer of 1925 or possibly the early fall. Then later, I would say in November, because I remember it was during the time we were making the *Volga Boatman* upon the Sacramento River, which was one of the finest pictures that we made, another member [202] of the company, I think the man who was at that time vice president of the company, stated to me that they would not—were not going to go on with the proposition that they could not get the money out of the pictures; the pictures were costing too much money, and that it had to come to an end. So I stated to him that I felt that position was wrong; that they had obligated themselves to do certain things and that they should do them. I went to see Mr. de Mille concerning it. He was on the Sacramento River directing this *Volga Boatman*, and we succeeded, to a certain extent, in overcoming that situation, but only for a period of time. That was the latter part of 1925. We went into 1926 and it became apparent that their organization was

(Testimony of Neil S. McCarthy.)

not capable of getting the money out of the pictures and I felt, and they agreed, that it was due to their failure to do some of the things which had been agreed upon at the time the company was organized and the time we went in with them.

They agreed at that time to acquire theatres for the exhibition of these pictures. The business had changed quite a bit at that time. At that time the theatres were more or less running the picture business. The principal producing companies had acquired theatres and, naturally, gave preference to their own pictures in those theatres. The deMille Productions, Inc. were independent producers and the independent producers at that time were in a position to be stifled. I think that was one of the objects in getting these theatres by the big companies.

One of the things we insisted on as a part of the Cinema affiliation was that they should acquire theatres so we would be assured of places to show our pictures, not necessarily theatres in every city, but they agreed [203] to acquire theatres in most of the principal cities so we would have enough to have a trading value with the other companies, 'to show their pictures in some of our theatres and to require them to show our pictures. We agreed with them at that time to put money into the theatre operations with them. We attempted to draft it into a contract, their attorneys and myself, but we could not fix definitely what was to be done. We knew that we had to have theatres in order to succeed. So we left

(Testimony of Neil S. McCarthy.)

that to the verbal agreement and the understanding between us as to how to do it. We did acquire some theatres throughout the country. We put in our money with them in the Golden City Theatre chain in the Bay region of San Francisco. I think we put in \$20,000.00 or \$30,000.00 in the acquisition of that property. I think they organized a corporation known as the North American Theatres and we put money into that. There were some theatres in the northwest in the chain. We put money into that, and two or three others that we put our money in with theirs to try to acquire these chains. They stopped. They did not go ahead with the theatres. As a consequence, they were not able to get the money for the pictures. It became apparent during 1926, particularly the latter part of it, that they could not make a success of their venture.

About that time they negotiated with the Keith Albee Circuit to try to get them to become affiliated with us. They had quite a chain of theatres all over the country that I think extended from the Atlantic Ocean to the Pacific Ocean. At that time they were vaudeville houses. Vaudeville was not as popular as it had been. They wanted to get pictures for their theatres and had been trying to show pictures in their theatres. They could not get the product. Mr. Murdock, who was the manager of those companies, [204] had wanted our pictures for some time, and he finally agreed to make a deal of some kind with the companies with which we were affiliated at that time in order to acquire our pictures, and agreed to

(Testimony of Neil S. McCarthy.)

show a certain number of pictures for a certain amount of money. That went on, and during the latter part of 1926 we felt—I should not say the latter part—possibly the early part of 1926. We felt that theatre affiliation would give us the outlet for our product which we needed. I am going on with the history of this relationship. Possibly I am not answering your question.

In 1926 even with that affiliation they could not sell the pictures. Their selling organization was not a good organization and they could not get the money for these pictures which they should get. Consequently, that contract was terminated or that relationship broken and in 1927—We started negotiations the latter part of 1926 and continued them and in 1927 a new arrangement was made with the Pathe Exchange, which was a very well known distributing company in the business at that time.

It was in April, I think, that the contract was signed. It was four or five months being negotiated, the contract, but it was finally signed in April, 1927, signed as of that date. The printed contract you show me is the contract that Cecil B. deMille had with Pathe. They were printed contracts. [205]

This was a real financing at this time. The people in Wall Street were financing this and they had quite an arrangement by which this financing was done and this contract was a part of their entire scheme and, as a consequence, was one of the exhibits attached to their main contract. This is our contract. That was a deal of theirs.

(Testimony of Neil S. McCarthy.)

Whereupon the contract so identified by the witness was received in evidence as Petitioner's Exhibit No. 10.

I think the whole document might not become relevant. I think this was part of their contract but theirs was not necessarily part of ours. By "theirs" I mean Pathe and Blair & Company, and the people doing the financing.

The Cinema arrangement lasted about a year and a half because while the Pathe contract was signed in April, the Cinema deal had practically died six months before that. The Pathe arrangement lasted about a year. It was terminated almost a year exactly from the date of the original contract, April, 1928, as I recall it.

The friction during its existence was their inability to sell the pictures and to get the money for them which we felt they should get. With Pathe there was the same kind of friction, also. That was terminated in 1928. We put our entire organization—took it out of Famous Players and had that with us right up to this time. I know that there was a terminating agreement between Pathe and the Cecil B. de Mille Companies. This contract shown to me is the agreement dated the 18th day of April, 1928, terminating the previous agreement of April 11, 1927. That has [206] some exhibits attached to it. The exhibits, I think, cover the people whom we took and certain of the equipment on which we had reserved an opinion, and that we took out of there.

Whereupon the document so identified by the witness was received in evidence as Petitioner's Exhibit No. 11.

(Testimony of Neil S. McCarthy.)

I carried on negotiations for Cecil B. de Mille Productions, Inc., for other contracts with other companies before that termination agreement which has been offered in evidence was signed because I saw several months before that that would be terminated, and had been conducting negotiations for some time.

We finally entered into a contract with another company to secure financing. We finally made a contract to distribute with the Metro-Goldwyn-Mayer Pictures Corporation. This contract shown to me is the contract with Metro-Goldwyn-Mayer which was signed the 31st day of July, 1928, and it consists of forty-five pages. It is a long one; forty-five pages.

Whereupon the document so identified by the witness was received in evidence as Petitioner's Exhibit No. 12.

We met with the same situation after the execution of this Metro contract that we had had with Famous Players. We had to get the money for our pictures and they insisted upon reserving the right, which was customary in the business—everybody that advanced money whether a bank or distributing corporation, insisted upon reserving the right to approve the story and cast and different things having to [207] do with the production, and Metro insisted on it in this contract. As a consequence, we first had difficulty with them as to the second picture which was to be made. They wanted us to produce what they called a musical picture, musical extravaganza, and our judgment was against it. That was the time

(Testimony of Neil S. McCarthy.)

when sound came into pictures. It came into pictures at the time of the termination of the Pathe Contract and the making of the Metro contract. Prior to that time all that you saw on the screen was figures. You heard no spoken voices or words. You merely had titles.

The art of photographing sound so it could be projected on the screen with the action itself had been perfected and was being perfected a few years prior to that time, and had been perfected about that time. There was quite a bit of demoralization as to the type of product to be made, and many of them wanted to make musical comedies, extravaganzas. They had been done. It was much the same story. They wanted us to do it. Our judgment was against it. They insisted on the second picture being a picture of that type, and we made *Madam Satan*, and I want to say that that picture almost ruined us.

I hope I am not offending Mr. de Mille when I say that. It was disastrous to us. Mr. deMille felt at the time that it was not the picture to make, and his judgment proved correct. The very thing I knew would happen did happen.

One of the principal sports, if you want to describe it that way, in the motion picture industry, particularly among the executives, is [208] passing the buck. When a picture is bad it is the fault of somebody other than the executives. If it is good it is because of their foresight that it was a good picture. *Madam Satan* was not up to expectations. They criticized our organization very harshly for making the

(Testimony of Neil S. McCarthy.)

picture. They said our organization was not up to date. They did not like our writer. We had a writer whom we had had ever since we started, Jeanie Macpherson. They claimed she could not write; that our organization was bad and could not make pictures. They refused to renew the contract although they did try to induce Mr. deMille from us and offered him a job as director. They offered him a contract to develop pictures for them, but they would not give the de Mille Productions, Inc., another contract for producing motion pictures for them.

On account of Madam Satan and the fact, as I say, that they attempted to pass the buck to us on it, we could not get a contract for over a year. I think we were a year and a half before we could get another contract to produce motion pictures. They passed the word down the line to all the organizations in the business that our organization could not produce pictures. They said that Mr. de Mille was fine and could direct pictures but that he could not produce pictures. I think from that time on until this contract was terminated—I would like to refresh my memory on that date of the termination of that contract, if I may. I would like to get the dates exactly, if I may get them from Miss Rosson, to get it accurately.

The Metro contract terminated in April, 1931, and the Paramount [209] Publix contract started in July, 1932. We were over a year before we could get a contract with anybody to produce pictures. The contract which was terminated in 1931 is the contract of July 31, 1928. That is what we call the Metro contract.

(Testimony of Neil S. McCarthy.)

The termination agreement between Pathe and the de Mille Productions provides for in Exhibit A setting forth the organization, the equipment and storage, etc., which we were to have upon the termination of that contract. This document shown to me is that Exhibit A, which contains in my handwriting, "Exhibit A to agreement of April 18, 1928, between Pathe Exchange, Inc., Cecil B. de Mille Pictures Corporation and Cecil B. de Mille Productions, Inc., and Cecil B. de Mille." It is initialed by Cecil B. de Mille, "C. B. de M." and by Jesse Lasky, "J. P. K."

Whereupon the document last identified by the witness was received in evidence as Petitioner's Exhibit No. 13.

Continuing, the witness testified on cross-examination as follows:

The Ten Commandments is the picture which was made under the contract of August 16, 1920. That was made immediately prior to the contract of 1923. The taxpayer was obligated to pay some excess costs. That results from this, we agreed to produce the picture. They agreed to advance us a certain amount for production of the picture. We were to produce the picture and deliver it to them. When they advanced the money then we were to produce the picture and deliver it to them, when they advanced the money that they had agreed to but, as a matter of law, we were obligated to do it, but not because of any express provision in [210] the contract as to that. There is no express provision in the contract stating that if the amount of money which we agreed to

(Testimony of Neil S. McCarthy.)

advance to you for the cost of production is not sufficient to complete it, you shall, nevertheless, complete it and deliver it to us and pay the money. That is the result of the contract. I suppose you would call that my interpretation of the contract. It is the agreement between the parties. We did not pay the excess cost. We compelled them to because I contended it was theirs. They agreed it was theirs and, consequently, agreed to advance the additional cost. We offered, at that time, however, to take the picture over, take over the entire thing for \$1,000,000.00, buy all of their interest in it, and take it off of their hands, and buy them out, terminating the contract for the full amount which had been expended at that time, which was \$1,000,000.00. They did agree they would terminate the contract and sell out their interest and we pay them the amount. We then set about to borrow the money because we did not have the money to do it. When we felt that we would be able to get other people to come in with us to buy them out, terminate the distribution contract, we notified them to that effect, and Mr. Zukor told me later that they went down to the bankers and they were so enthused about it that they would not sell and they could not close the contract. We did not buy the picture. We did not buy their interest in it. I first became interested with Mr. de Mille in the production of pictures about 1914 or 1915 I became a member of the partnership with Mr. deMille. [211]

The witness was then asked the following question:

(Testimony of Neil S. McCarthy.)

“When was that partnership organized?”

Whereupon counsel for petitioner objected to the question on the ground that it was immaterial to the issues in the case and improper cross-examination. The objection was overruled and an exception was noted. The witness continuing, testified as follows:

The partnership articles were signed in 1920. They are dated the 16th of August, 1920. The actual completion of the organization was not, however, on that date. It had been discussed for some two or three years and I think was actually completed some two or three months after this date, but that is the date of Mr. and Mrs. de Mille's marriage, and he stated he considered that his lucky date, and he wanted that date fixed on the partnership articles, and that he wanted everything dated as of that time, so that is why it was dated the 16th of August, and that was not the date when the partnership was organized. The document before me is a copy of the articles of partnership.

Whereupon the document so identified by the witness was received in evidence as Respondent's Exhibit “A”.

Continuing, the witness testified:

“I would say, at approximately the same time I entered into the partnership I signed an option in favor of Mr. de Mille to sell to him the interest I was acquiring in the partnership. This option which you handed me is dated the 2nd of November, 1920, but it was part of the same transaction. It bears a different date. I think this date [212] of the second

(Testimony of Neil S. McCarthy.)

of November, 1920, is probably the time when the partnership organization was finally perfected and the articles signed. I think the document you have handed me is a copy of the option agreement which I executed. There is no doubt in my mind about it. I am confident it is a copy of the original. I say that because I have not compared it.

My answer to the question, if that is the agreement which carried over into the corporation and under which I sold my stock to Mr. de Mille, has to be no. There was no option, as I recall, given to Mr. de Mille to buy my stock in the corporation at the time. Would you like to have me explain that without the necessity of questions? I will be glad to do it. At the time the partnership was organized this document was signed. Later a corporation was formed and I received stock in the corporation in proportion to my interest in the partnership. Mr. de Mille had no option on that stock. That is my recollection. I sold the stock, nevertheless, to Mr. de Mille pursuant to the terms of this document."

Whereupon the document last mentioned by the witness was received in evidence as Respondent's Exhibit "B", over petitioner's objection and exception. The objection was on the same grounds as stated heretofore.

I had no knowledge of the execution of another option executed by another member of the original partnership. I prepared the form. I did not know that it was executed and was in effect similarly as

(Testimony of Neil S. McCarthy.)

this, [213] but I am confident that it was. I would say I know that it was. I am being a little technical. If you ask me if I saw it signed or saw the signed document I did not, but I know it was signed and was in existence.

There is an option contained in the articles of partnership itself in which each of the partners is given an option in the interest of the other. In the event that they desired to sell their interest in the partnership the other partners had a right to buy it in the following order:

Mr. de Mille having the first, Mrs. de Mille having the second, Mrs. King the third and myself the fourth.

In addition to those options I prepared options which I advised Mr. de Mille to have executed by Mrs. de Mille, by Mrs. Adams, and myself giving the options to buy our interest at any time within a period of six years, which was the time he stated he felt we should be able to make a success of the organization. I know the options were signed by Mrs. de Mille and Mrs. Adams as well as by myself. In form they were similar to the ones which have been introduced as Respondent's Exhibit B. They were executed and not exercised. My option later on you could not say it was exercised because it did not carry over into the corporation but I wanted Mr. de Mille to take back my stock and so stated and we discussed the matter and he took it

(Testimony of Neil S. McCarthy.)

back. Mr. de Mille took the stock back as though that option had carried over into the corporation. I do not think Mr. de Mille gave the matter [214] any thought. I would not say he had any such understanding the option had carried over into the corporation. That option was entirely my suggestion, I think. He may have thought he had something to do with it. The other option form exhibited to me was Mrs. Ella King Adams; Mr. de Mille's mother-in-law. That is in precise language with the one which is in evidence as Respondent's Exhibit B.

Ella King Adams is Mrs. de Mille's step mother. The partnership, as originally composed, consisted of Mrs. Adams, Mr. de Mille and Mrs. de Mille and myself. When the property of the partnership was turned over to the corporation each of us got common stock of the corporation in proportion to our interest in the partnership. In the year 1924 Mr. de Mille bought my stock interest in the corporation. He bought it at my insistence. I do not think I would even say suggestion. I wanted to get out because I had been very sick. I had a nervous breakdown in 1923 and I was out,—I had, I think, pneumonia and a lot of things and I was out for approximately a year and during the time I was gone or after I got back—Mr. de Mille and I had been the very closest of friends and we are still and I am sure we always will be—more than just friends. We have been exceptionally close and when you

(Testimony of Neil S. McCarthy.)

are sick from nervous breakdown you do not do things normally. You are irritable. I became irritated at the situation which I felt existed when I got back. I felt Mr. de Mille had not just the complete confidence in me that I would like to have had him have and, as a consequence, I [215] suggested to him that he take the stock. It was not Mr. de Mille's suggestion at all. He never asked me to sell it to him. That option was limited to six years because Mr. de Mille stated that it took that length of time to make a success of the Lasky Company which he had originally organized and he wanted all of us to participate with him in the success of this company which he felt we would do if we retained our interest. As a matter of fact, the option was my suggestion and I insisted that he take it out of consideration to him. He was giving me an opportunity to go into partnership with him and we had been such close personal friends that I did not want in any way to impose on that friendship.

At the time that I sold my stock I also had some interest with Mr. de Mille in other ventures and I asked him to take them all at the same time and an agreement covering the entire transaction was executed. I have a copy of that agreement. The document shown to me is the agreement which was executed at the time I sold my stock to Mr. de Mille.

Whereupon the document last mentioned by the witness was received in evidence as Respondent's

(Testimony of Neil S. McCarthy.)

Exhibit "C" over petitioner's objection and exception. The objection was the same.

At this point the respondent offered and there was received in evidence, over petitioner's objection and exception, the agreement under which Mrs. Adams sold her stock to Mr. de Mille. The objection was the same.

That is my signature on the two documents shown to me. One is [216] the income tax return headed, "Partnership and Personal Service Corporation return of Income for Calendar Year 1920," and the other is headed, "Partnership and Personal Service Corporation return of Income for Calendar Year 1921." That is my signature on each of them. Mr. de Mille also signed this one in 1920.

I don't know if a partnership return was filed for the period in 1922 from January 1, 1922 up to the date of the organization of the corporation.

Whereupon the partnership returns for 1920 and 1921 so identified by the witness were offered and received in evidence as one exhibit, marked Respondent's Exhibit "E", over petitioner's objection and an exception was noted.

The witness was then asked the following question:

I call your attention to Respondent's Exhibit E, which constitutes the partnership returns of the Cecil B. de Mille Productions for 1920 and 1921 and I call your attention to the schedule B of the 1921 returns and I will ask you if there was dis-

(Testimony of Neil S. McCarthy.)

tributed to you the sums shown on that return as your distributive interest for that year?

The question was objected to as irrelevant and immaterial. The objection was overruled and an exception was noted.

The witness, continuing, testified: I had a ten per cent interest in the partnership, that is shown on the statement. Referring to Respondent's Exhibit E, I don't understand this shows this as my distributive share. The column which has been pointed out to me says [217] "Other Income." That shows the total of the profit from the partnership operations for the year segregated into the percentages owned by each of the partners. I did not receive that amount in that column which is opposite my name, which is \$16,491.68. There was no intention of paying it out to me or paying the other items and it was not paid and there is no representation on there that it was. I believe, however, I did pay an income tax on it.

I said I did not understand the return shows a distributive share. It is not designated distributive share. That is the percentage of the accumulated earnings of the partnership, which is equivalent to the interest which I owned in the partnership. I did not receive it. It was not paid to me.

I would rather not interpret, the explanations given on the return, the printed instructions, and so forth which describe what that is supposed to be, even. I did not get the sum indicated there.

(Testimony of Neil S. McCarthy.)

There was never any thought or representation in that return that I got it. I don't know if we filed a partnership return for the year 1922.

Referring to this 1920 partnership return and to schedule C thereof, I do not like to quibble with counsel but this is not headed "Distributive Interest." There is my name, Neil S. McCarthy. In the next column it says, "10 per cent" and then opposite that \$5,137.13, which I did not receive. I do not see any intimation here that I did receive it.

I recall that at or about the time the partnership was organized [218] a contract was entered into between the partnership and Mr. C. B. de Mille. I am satisfied the document handed to me is a copy of the contract.

Whereupon counsel for petitioner offered and there was received in evidence as Petitioner's Exhibit No. 14 the original contract between the de Mille partnership and Cecil B. de Mille, copy of which the witness had last above identified. Continuing, the witness testified:

The way in which the partners fixed the compensation of the different people who were members of the partnership and who it happened were important in rendering their services in the partnership—in arriving at the compensation of the members in the partnership we discussed the entire situation with the partnership. I recall one discussion was whether or not we should take very little and permit the partnership to accumulate what we

(Testimony of Neil S. McCarthy.)

had planned on doing, enough money to finance our own productions or whether we should take out what we felt our services were completely worth, or that we should be paid a substantial compensation and work in that manner. It was finally decided, so far as I was concerned—I felt I wanted a certain amount and stated that to Mr. de Mille and the other members of the partnership approved it, and it was agreed to be paid to me. That was \$10,000.00 a year, as my salary as attorney for the partnership, I was under a retainer prior to that with the Famous Players Lasky Corporation. I was attorney and did things for Mr. de Mille, as well. I don't know how much I ever charged him for what I had done for him [219] prior to that time. He, of course, had been associated with the original Lasky company. I have represented Mr. de Mille and the de Mille corporation and Mrs. de Mille—I would say I have been Mr. de Mille's attorney really since 1914 and am at the present time and if I am fortunate I hope to continue to be.

In fixing my compensation at \$10,000.00 a year as attorney for this partnership, it was not understood that I was not to withdraw any of the partnership earnings. We did withdraw some earnings. What we wanted to do was to try to build up enough money in this company to produce and finance our pictures. We had to finance through somebody else because we did not have our own capital. I understood that situation thoroughly be-

(Testimony of Neil S. McCarthy.)

cause I had been in the business at that time some six or seven or eight years since the original Lasky company, and there was no agreement that there were to be no earnings distributed, if that is what you mean. No such agreement was ever made at any time. We did distribute some of those earnings through the partnership. In 1922, I am confident, there was a 100 per cent dividend. I don't know anything about the return, whether it was made or not, but if it was it should show and would show. You must have known it because it was so stated to all of your people. I don't know if we filed a return for 1922. I know that during that year there was a dividend paid. My recollection is that it was a 100 per cent dividend. I got at that time my proportion, whatever it was. It was a 100 per cent dividend. I put in \$2,500.00 into the partnership, money.

Continuing, the witness testified, and the following occurred: [220]

Q. Was that the only distribution you ever received from the partnership?

A. I did not finish my answer. I put in \$2,500.00 of my money in this partnership when I went in, and I received \$2,500.00 dividend if it was a 100 per cent dividend, which it was, according to my recollection, in 1922.

Q. Is that the only distribution you ever received from the partnership besides your salary?

A. The partnership was then changed. The

(Testimony of Neil S. McCarthy.)

corporation was formed and the partnership then transferred its assets to the corporation and I received dividends from the corporation after that.

Q. My question was, that was the only distribution you received from the partnership?

A. The partnership went out of existence about that time.

Q. That is right.

A. Yes, that is correct, answering the other way, too.

Q. Do you recall at the same time that the partnership entered into a contract with the Famous Players Lasky Corporation Mr. de Mille also entered into a contract with the Famous Players Lasky?

A. No. The way you describe it is not correct. Just a minute. I will answer it.

As a part of the contract between the Famous Players Lasky Corporation and the de Mille partnership the Famous Players Lasky Corporation required Mr. de Mille, because we agreed that he would direct the pictures we were to produce for them, and as a consequence they did [221] what is customary in contracts of that kind in the picture business, to require the individual who is either the director or principal artist in connection with the venture to guarantee that he would perform the things required of him in connection with the production of the pictures. That is what Mr. de Mille did.

(Testimony of Neil S. McCarthy.)

Q. You have a document before you. Will you identify it?

A. That is the one you just deposited here?

Q. Yes.

A. That is correct. That is the agreement.

Mr. LEMING: I offer it in evidence.

Mr. MACKAY: Pardon me. May I ask the purpose of your offer?

Mr. LEMING: The witness has testified, I believe that it supplemented the contract of the partnership and the Famous Players Lasky Corporation.

The WITNESS: Contracts of that type are always required by any company, distributor or bank in advancing money for the production of pictures. They always take a guaranty contract from the artist in connection with those pictures to perform the service required by the producers. That is the purpose of that contract and it is the document that went with the contract between the partnership and the Famous Players Lasky Corporation in 1920 or 1922.

Mr. LEMING: Which is in evidence as Petitioners' Exhibit 7?

The WITNESS: I do not believe I have that exhibit.

The MEMBER: It is the contract of August 16, 1920.

The WITNESS: That is correct. It was required as a part of that contract. [222]

(Testimony of Neil S. McCarthy.)

Mr. LEMING: That is petitioners' Exhibit 7, if your Honor please. It seems to me that it is admissible as a part of the same.

Mr. MACKAY: The same objection, on the ground that it is incompetent, irrelevant and immaterial.

The MEMBER: The objection is overruled. It will be received as Respondent's Exhibit F.

(The document referred to was received in evidence and marked "Respondent's Exhibit F", and made a part of this record.)

Mr. MACKAY: I want to place this in evidence. If it will save time I will be very glad to do so (indicating).

Mr. LEMING: If they want to do that they may go in right now without objection.

The MEMBER: These relate to what contract?

Mr. MACKAY: The one of August 16, 1920.

The MEMBER: That is Exhibit 7. What does the other one relate to? Are they both on that?

Mr. MACKAY: Yes, I think so. These are two supplements. They are letters of correspondence between the parties explaining the terms of the contract. I should like to have them go in as a part of Exhibit 7.

The MEMBER: Let them be attached to and become a part of petitioners' Exhibit 7.

Mr. MACKAY: These being the originals I should like the opportunity to submit copies.

The MEMBER: Very well.

(Testimony of Neil S. McCarthy.)

Mr. LEMING: May the record show the dates of those so they may be properly identified? [223]

The MEMBER: Yes.

The CLERK: The first one is dated New York City, New York, February 19, 1921, and the second one is the letter dated November 17, 1920, addressed to Mr. Cecil B. de Mille.

Mr. LEMING: Signed by whom?

The CLERK: Signed by Cecil B. de Mille and Jesse L. Lasky.

By Mr. LEMING:

Q. I call your attention to Petitioners' Exhibit 5 which is a receipt for \$40,000.00, being in full payment of the amount due to the undersigned this day under that certain agreement dated the 23rd day of January, 1925, between the undersigned, Thomas H. Ince Corporation and the said Cecil B. de Mille Productions, Inc. Was there any actual cash paid out by this taxpayer in that connection?

A. \$50,000.00. You mean does this receipt for \$50,000.00—did they actually give the \$50,000.00 of which this represents to be a receipt?

Q. Yes.

A. They certainly did. That was the first payment down on the Ince Studios, as I recall it, on the purchase of them. I was a little uncertain on that this morning, whether it was \$50,000.00 at one time. It was \$10,000, according to the receipt at one time and \$40,000.00 at a subsequent time.

(Testimony of Neil S. McCarthy.)

Q. How did the stock of the Cinema Corporation of America enter into that transaction? [224]

A. Which transaction?

Q. The purchase of the Ince Studio?

A. It did not enter into the purchase of the Ince Studio at all at this time. This was purchased by the Cecil B. de Mille productions. We later transferred the studio and the de Mille Company properties, the equipment, etc., to the de Mille Pictures Corporation. Then we transferred the stock of the de Mille Pictures Corporation to the Cinema Corporation for stock of the Cinema Corporation.

Q. The affidavit executed by Mr. de Mille in January, 1933 makes this statement:

“The Cecil B. de Mille Productions, Inc., reorganized its entire structure and as a part thereof we organized the Cecil B. de Mille Pictures Corporation and transferred the contracts of the actors and actresses and others and the physical properties used in the production of motion pictures to the Cecil B. de Mille Pictures Corporation and took all the capital stock of the Cecil B. de Mille Pictures Corporation. We then turned in all the stock of the Cecil B. de Mille Pictures Corporation to the Cinema Corporation of America for \$40,000.00 in cash, which was part of the purchase price of the studio property and 100,000 shares of common stock and 7,474 shares of the preferred stock of the Cinema Corporation of America.” Is that correct?

A. That is a mistake. If that affidavit states that

(Testimony of Neil S. McCarthy.)

it is a mistake. We did not get any money from the Cinema Corporation, according to my recollection. I know positively that we paid \$50,000.00 on this contract. The point I am trying to recall is whether we got [225] any money at any time from the Cinema Corporation, \$40,000.00 or any other sum. I do not think we did. I am positive the money we paid on this contract was for the purchase of the Ince Studio and we never got any money from the Cinema Corporation. That is a mistake, I am confident.

Q. In order that you may be sure of the source of that information I just wanted to call your attention to the document which I have read. I will ask you if you recognize that as Mr. de Mille's signature (indicating)?

A. Yes. Where is the point from which you are reading?

Q. Beginning with the last part on page 30.

A. That is very clearly an error. That is not correct. The other affidavits which you have show that it was turned in for 100,000 shares of common stock and 7,474 shares of preferred stock, and your other affidavits which were furnished you before so show.

Q. I don't know what affidavits you are talking about.

A. Other affidavits furnished to you or Mr. Caldwell and to Mr. Gowdy in Los Angeles. I told them the entire transaction personally.

Q. What were the dates of those affidavits?

(Testimony of Neil S. McCarthy.)

A. I don't recall. I do know definitely that I personally told Mr. Gowdy, who is your agent in Los Angeles, and Mr. Caldwell, the man who examined this transaction, on two or three separate occasions the entire history of that transaction.

Q. Was that subsequent to or prior to January, 1933? [226]

A. Prior to that; long prior to that.

Q. This affidavit of Mr. de Mille is dated January, 1933.

A. It is a mistake. Your department had information to the contrary, the correct information.

Q. Will Mr. de Mille be in a better position to know the facts than you are?

A. Not as good, because I handled the transaction. He directed the pictures.

Q. In that connection, have you a favorable opinion of Mr. de Mille's financial ability, generally?

A. Yes.

Q. Do you have a very favorable opinion of his capacity to take care of himself in financial situations?

A. I would say no. I say that because he has acted contrary to my advice in financial matters and I will not give myself the benefit of a doubt. I think Mr. de Mille is a pretty good business man in some ways but I think his judgment on his own financial matters is not so good in some instances.

(Testimony of Neil S. McCarthy.)

Q. What do you think of his ability as a director?

A. I have always thought that he was one of the very best in the business. Mr. de Mille thinks that there are some others who are better than he. I think, without question, he is one of the very best in the industry.

Q. There are not very many who compare with him, are there? [227]

A. There are some. He is different from the others, if you would like to have me describe it exactly.

Q. All right.

A. There are probably better directors who simply take a motion picture and direct it as we consider a director. Mr. de Mille has executive ability going with that. He is what we call a producer and has the ability to produce rather than to merely direct. A director of a motion picture will put his hat on his head in the morning and he goes to the studio and everything is on the studio for him and he takes his manuscript and says "Camera." When the time comes to quit at night he goes home or to a party and does not worry about anything. Mr. de Mille is not that type of a man. He has an ability beyond that. He not only can start the camera clicking in the morning, but he is exceptional in story construction, in all the details of the production of a motion picture. He has ability far beyond directors, but some directors may have, so far as the pure

(Testimony of Neil S. McCarthy.)

technical direction is concerned, ability beyond him.

Q. You would place him in the very first rank as a director, would you not?

A. Yes. I would think he is close up to the first rank. There are some better than he.

Q. Do you have any idea how many?

A. Not many. I would say not more than two or three. I am really sorry you ask this because I hate to state it in his presence. As an exact and impersonal fact I think that is correct. [228]

This corporation was organized to take over the business of the partnership. The partnership was organized in 1920. The organization of that partnership was first mentioned to me by Mr. and Mrs. de Mille I think about 1918; probably the early part of 1918. They called me to their home one evening to discuss the matter with them and stated they had definitely decided to organize a company to produce motion pictures themselves. Mr. de Mille stated, and I can not state what he said to Mrs. de Mille—he stated that the Lasky Company had developed beyond the point where he was an important factor in it as he had been when originally organized and that he felt insecure in it; he was having continuous conflict with them as to the type of product to be made and was generally satisfied with the situation, and he stated they had decided to organize a company to produce motion pictures themselves, and I at that time was attorney for the Famous Players Lasky Corporation and as attorney I did quite a

(Testimony of Neil S. McCarthy.)

bit of executive work for them in the negotiation of contracts for land, studios, rates, and so forth. He asked me if I would become a member of the organization with him. I stated to him, after discussing it—I am giving you the important points—I was the attorney for the Famous Players Lasky and while I was his attorney, also, I felt that I owed it to the Famous Players Lasky to tell them of his decision, and I did not want to violate his confidence, but I asked his permission to first tell the Famous Players Lasky Corporation of the decision, and stated that if they did not do something to [229] satisfy him that I would then become a member of his organization and go with him. He realized and I did that it would necessitate the severance, probably, of my relation with the Famous Players Lasky Corporation. Taxes were not mentioned at all at that time in the conversation. I was asked by one of your representatives whether the taxes were ever discussed or if we had them in mind. Of course, we had taxes in mind. We could not get away from taxes during that year, but if you mean did we discuss the organization of this corporation or the partnership and how it would affect the payment of taxes by Mr. de Mille, Mrs. de Mille, myself or that partnership, no, that was not only not a part of any agreement, but it was never discussed in that manner whatsoever.

In the conversation at which Mr. and Mrs. de Mille told me first that they had decided to organ-

(Testimony of Neil S. McCarthy.)

ize a company to produce their own pictures the word "taxes" was never mentioned in connection with it. But we naturally had taxes in mind. I think every natural person at that time had taxes in mind and always had taxes in mind. It was not in my mind during that conversation, as I recall it now. It never was discussed at any time. That would apply generally throughout the entire transaction. It applies to me so far as taxes are concerned, right up to this minute.

If I had a corporation to organize I think I would consider at the same time the question of taxes. I would have in mind what I was going to have to do. I would have in mind all the eventualities in any contract that I would form and in anything else that had to do with the corporation. [230]

This partnership was organized finally probably a year after that conversation, possibly a little more, and up to that time and even during the time of the conversation the avoidance of taxes was never mentioned.

When I say I stated to Mr. de Mille—I asked his permission to disclose to the Lasky Company what he had stated to me and he granted that permission. I told them and they apparently lulled Mr. de Mille into a position where he at least postponed the formation of his company for some year or a year and a half. I do not remember the exact date. I am talking about the partnership now. The partnership was the first company that was organized.

(Testimony of Neil S. McCarthy.)

That was organized as a partnership at my suggestion, I am pretty sure. If you would like the history of that I would be very glad to testify to it. I think it is important.

Among other things, Mr. de Mille said to me at that time and called attention to the fact that the Famous Players Lasky, which was a merger of the old Jesse L. Lasky Company, which was originally organized by Mr. de Mille, Mr. Lasky and Mr. Goldwyn—that old Jesse L. Lasky Company had been merged with the Famous Prayers into the Famous Players Lasky Corporation—it had been merged into the Famous Players Lasky Corporation for which he was then working—he stated this Famous Players Lasky Corporation was removing from time to time certain of the old Lasky people and that he felt insecure because of that, also.

Referring again to the affidavit, on which I identified Mr. de Mille's signature and to a letter which begins on page 7 and is concluded [231] on page 8 of the affidavit, that is a formal letter which was formally delivered to the Famous Players Lasky Corporation at the time the partnership was about to conclude its arrangement with the Famous Players Lasky Corporation for a distribution contract.

Mr. LEMING: I offer that letter in evidence as respondent's Exhibit G.

The MEMBER: Is there any objection?

Mr. MACKAY: The same objection.

(Testimony of Neil S. McCarthy.)

The MEMBER: What is that? That it is incompetent, irrelevant and immaterial?

Mr. MACKAY: Yes.

The MEMBER: Does it relate to this matter we are talking about, Mr. Leming? You have not told me anything of it.

Mr. LEMING: Yes, if your Honor please.

The MEMBER: Very well. The objection is overruled. It will be admitted as respondent's Exhibit G.

Mr. MACKAY: Exception.

(The letter referred to was received in evidence and marked "Respondent's Exhibit G", and made a part of this record.)

Mr. LEMING: The letter is incorporated in that affidavit. I assume there is no question as to that. We can use a copy.

The MEMBER: What is the date of the letter?

The WITNESS: It is dated August 14, 1920, your Honor. [232]

Mr. LEMING: It is addressed to the Famous Players Lasky Corporation, attention Mr. H. D. H. Connick, Alexandria Hotel, Los Angeles, California, and is signed "Cecil B. de Mille, by Neil S. McCarthy." We will supply a copy before the proceedings are over.

The WITNESS: Mr. Connick at that time asked me to give him such a letter. He was a representative of the Famous Players Lasky Corporation.

(Testimony of Neil S. McCarthy.)

Continuing, the witness testified:

At the time the corporation took over the partnership assets, I do not know offhand how much money Mr. de Mille owed the partnership. I do know what the Mercury Aviation Company was. I organized the company. The stock was owned by Cecil B. de Mille, Mr. Harry Chandler, and Mr. Dodd I think had some stock. I can not recall whether John Fisher did or not. There were several other stockholders. I don't recall how much of the stock Mr. de Mille had. He owned a very substantial part of it. I would think he was the dominating stockholder in it, probably the largest stockholder in the company. He became a much larger stockholder at one time when the company finally proved to be an unsuccessful venture. He bought back from those who had bought stock because he considered it a confidence in him and he insisted on giving their money back and taking over their stock, and then he became the largest stockholder in the company. I do not know how much money that Mercury Aviation Company owed the partnership at the time the assets were taken over by the corporation. I don't know that I ever [233] had any knowledge concerning it. I think, without question, I may be able to get that information. I think Mr. Fisher was manager of the Mercury Aviation Company and would probably know.

We organized two companies, one to operate in California and one to operate in Arizona. My recollection is that we organized the Mercury Aviation

(Testimony of Neil S. McCarthy.)

Company which operated in California. There was a stockholders' liability in California. And then we organized the Aviation Securities Company in Arizona and the Aviation Securities Company owned all the stock of the Mercury Aviation Company. I think that is the way the transaction was handled. That was because this was the first commercial aviation company in the United States. I am confident of that. It was a new venture. It is a thing being done now. We knew the hazards of it. We wanted to avoid that stockholders' liability and we had the stock owned by the Arizona Corporation, where there was no stockholders' liability. During the time we had that company we made 25,000 flights. That was in 1918 and 1919. And we never had one accident. It was finally terminated I think around 1921 or 1922.

Continuing, the witness testified.

Q. When the corporation took over the partnership assets do you recall if the notes receivable or accounts receivable which were taken over from the partnership included those of Mr. de Mille, the Mercury Aviation Company and the Aviation Securities Company?

A. I do not recall them as separate entities. I think it took over all the assets of the partnership.

[234]

Q. Which would have included the notes receivable?

A. I may have had knowledge and probably did of whatever was in existence at that time, but I have

(Testimony of Neil S. McCarthy.)

no knowledge now of what those notes receivable consist of.

At this point the following occurred:

Mr. MACKAY: I shall be very glad at this time to offer a certified copy, which just arrived, of the application of the corporation to issue its stock originally, and in that it shows what the stock was issued for. It will show the assets received and the liabilities, and among the assets were certain loans receivable. That may shorten this. I offer that as Petitioners' Exhibit 15.

Mr. LEMING. No objection to it.

The MEMBER: Petitioner's Exhibit 15 will be received in evidence.

(The document referred to was received in evidence and marked "Petitioners' Exhibit No. 15" and made a part of the record.)

The witness' attention was then called to Petitioner's Exhibit 15 and to that part under Paragraph 4 which sets forth that the corporation has received, and subject to the approval of the Commissioner of Corporations, has accepted an offer from Cecil B. deMille, Constance A. deMille, Ella King Adams and Neil S. McCarthy, being the partners composing the Cecil B. deMille Productions, to transfer to this corporation the property hereinafter described, which description is as follows, to-wit, and then in the assets listed is an item of loans receivable, \$140,578.45. The witness was then asked if he had any knowledge of the detail of those loans and he replied in the negative. [235]

(Testimony of Neil S. McCarthy.)

At this point, the witness' attention was directed to petitioner's Exhibit No. 4 and to that part of the Exhibit which is the minutes of the petitioner of April 2, 1923 and he was asked if he was present at that meeting. Whereupon the witness, continuing, testified as follows:

I was present at that meeting. I recall the discussion. I recall the transaction.

Whereupon the witness, continuing, testified and the following occurred:

Q. Do you know what particular indebtedness was under discussion at that time?

A. Yes, the indebtedness of Mr. deMille to the corporation. He owed the corporation some money and he wanted to get it paid. We tried to devise a means of getting it paid and decided to take Laughlin Park, which consisted of about 10 acres, and then have it subdivided and sell a portion of it, which we did. That was subdivided and portions of it were sold. I think we made a nice profit on the deal with Mr. deMille, much more than the price at which he gave it to us.

Mr. LEMING: If your Honor please, I am not going to waste time in moving to strike these long unresponsive answers which the witness has been making. Parts of the answers are not responsive. I submit these kinds of answers are unresponsive.

The MEMBER: I shall not coach the witness. I think he is disclosing very fully each transaction concerning which he is questioned. It is quite true that he is not giving you yes and no responses to your questions. It is very apparent that he knows

(Testimony of Neil S. McCarthy.)

of these transactions and he is in the shortest way possible giving us his knowledge of them. I shall not censure him for that.

Continuing the witness testified:

Mr. deMille's residence is on the property which I have referred to as the Laughlin tract. His residence was on it at the time he transferred it to the corporation (petitioner). May I describe it so you will have the facts? There is a residence on this property in which Mr. deMille [236] lives. The property consists of ten acres. That was the ten acres, including the place in which he lived, which we took over. That was in payment for an indebtedness of Mr. deMille's to the corporation. I do not know when that indebtedness originated. I probably did at the time. [237]

Q. You are unable to say, then, whether it originated as a debt to the partnership?

A. No, I can not say that. It may have been one of the obligations that we took over from the partnership. I don't recall.

Q. Do you know whether or not it also included some of the indebtedness due to the partnership by the Mercury Aviation Company and the other company, the Aviation Securities Company?

A. My answer is entitled to just the same weight in this, if I may make that explanation, because I have a faint recollection that I may be in error, that Mr. deMille at the time that Mercury Aviation Company was stopped, felt responsible for the com-

(Testimony of Neil S. McCarthy.)

pany and he did, as I say, buy some of the stock that these other men had purchased, relying on him. He bought it back from them when it was unsuccessful. I have a very faint recollection now that he at the same time felt obligated to take over the indebtedness of that company to the partnership and that he assumed it personally. That company was a company in which the public owned stock. There were probably a dozen of the most prominent people in Los Angeles who were stockholders who had come in largely through Mr. de Mille and he did not want to go to them for that money and he assumed it himself. That is my recollection.

Q. Is it your recollection, then, that that formed part of this indebtedness which was being discussed in the minutes of the meeting to which your attention has just been called? [238]

Mr. MACKAY: I object. That is unfair.

The MEMBER: This gentleman can take care of himself.

Mr. MACKAY: I have found that out.

The WITNESS: My recollection is very faint on that. I think it probably was. That was one of the items that was part of the indebtedness. The indebtedness probably consisted of more than one item. I have a very faint recollection of such a transaction where Mr. de Mille assumed that indebtedness himself.

By Mr. LEMING:

Q. Which had arisen during the existence of the property? (partnership)

(Testimony of Neil S. McCarthy.)

A. Yes. The corporation itself could not have paid the indebtedness. It went broke. We were ten or fifteen years ahead of the time.

On redirect examination the witness continuing, testified as follows:

By Mr. MACKAY:

Q. I think you stated in answer to a question of Mr. Leming that Mr. de Mille had been associated as a director with the Famous Players Lasky Corporation and the Jesse L. Lasky Corporation?

A. Yes, that is correct.

Q. Did I understand you to say that he had talked to you some time in 1918 about forming a partnership for the purpose of employing him to become a producer? [239]

A. He did not mention partnership in that connection. He said he wanted to form a company and I later suggested a partnership. I think he wanted a corporation. I said that it would be better to have a partnership and said, "Let us have a partnership." Later on when the banks complained or made suggestions we changed it into a corporation.

Q. Did I understand you to say that he at that time wanted to get out as a director from Famous Players Lasky?

A. Yes, he did. He and Mrs. de Mille both said they wanted to form a company to produce pictures themselves and separate from Famous Players Lasky.

(Testimony of Neil S. McCarthy.)

Q. Did he express the reason why?

A. Yes. One of the reasons was that he felt his position there was insecure, and I knew of the statement made to me by Mr. Lasky himself and that made me sympathetic toward Mr. de Mille's position which he stated to me at the time. Mr. de Mille was making some pictures that became some of the biggest money earners of the company, but the Famous Players Lasky executives did not agree with the type of picture, but he finally made them, and Mr. Lasky stated to me that he wished they could get rid of Mr. de Mille. Those pictures later turned out to be some of the biggest money earners they had. I knew [240] when he told me, and I presume they did, too,—I knew when he made that statement that his impression was correct—was probably correct. I wanted them to make another effort to try to keep him with them.

Q. Are there any other points on this organization of this partnership that you want to clear up while you are on the stand?

A. There is one point that Mr. Leming did not ask me about that I expected him to. That was the reason why we arrived at the terms for the options and the price of \$2,500.00 in my case. Would you like for me to give the facts there?

Q. Yes.

A. I think the matter of giving options was my idea. Mr. de Mille may have had the idea. I am confident he did not have it, however, because I had

(Testimony of Neil S. McCarthy.)

followed that practice in connection with any companies that I became associated with, with clients of mine. I have done it in other companies, to put the person who dominates the company in a position where he can not be taken advantage of. The fact that Mr. de Mille and I were very close friends was why I did not feel justified in putting him in the same position that he would be in if I were a stranger to him. There was the possibility that any member of the partnership could sell an interest to some stranger who might be unfriendly to him or who might not work in harmony, in as close harmony with him as we others would. [241]

In determining the term for it Mr. de Mille was the one who suggested six years because he stated it was approximately six years from the time the Jesse L. Lasky Feature Play, which was the first corporation with which he became identified in the motion picture business—it was approximately six years from the time that company was organized until they made a success of the company. That company was organized originally with Mr. de Mille, Jesse Lasky, Samuel Goldwyn, and a man named Arthur Friend. Mr. Friend was an attorney.

Mr. de Mille patterned this company exactly on the Jesse L. Lasky Company. He occupied the same position in our company that he had in the Lasky Company. Mrs. de Mille did the same work that Jesse Lasky had done and was as capable as Jesse Lasky. I did the work that Arthur Friend had done,

(Testimony of Neil S. McCarthy.)

which was as an attorney and some executive work, as well.

MRS. ADAMS went into the position of Mr. Goldwyn.

So he seemed to have in his mind in organizing this company the organization of the Lasky Company, which had been successful, and that he wanted to follow it.

Q. I think that is all unless you have something else.

A. I would like to correct my statement this morning.

Q. Oh, with respect to sound?

A. Yes. As a matter of fact, if I said "perfected," which I [242] undoubtedly did, that, of course, is not correct. Sound at that time had come to the point where they could show it on the screen without the audience leaving the theatre, and that is probably a more correct statement. I can remember when I was in college they used to try sound. Then they had the Edison sound, which was rather terrible. At this time they had begun to try to put it on the screen and it seemed to be practical. The people in the picture business are like sheep. When someone does something they all want to do that. Warner's had come out with an apparently successful sound picture and when they did that the others all started to do it. As a consequence, at this time every one was going to make nothing but sound pictures. There were not enough sound devices or sound studios to make the pictures. They did not know at

(Testimony of Neil S. McCarthy.)

that time yet what was the best system to use. It was supposed to be covered by patents. The General Electric Devices, I can not recall what they got out—it was controlled by General Electric, as I understand it. It later became what was called Erpi, and then the other devices were the devices of Warner's which was the Victor recording device.

It was all chaotic at that time. They built sound studios which cost from \$350,000.00 to \$500,000.00, to keep out every sound from the outside. A number of those things were done. Finally the companies themselves, not knowing what to do, banded together to use each other's devices so they would not spend the money. That [243] was a year or two later.

They used to have quarrels as to who would get to use the sound wagon, which had a transportable sound device to be transported on it, and they only had one or two of them and the different companies had to take turn about in using them.

Q. At the time you were a director in this company, the Cecil B. de Mille Productions, Inc., did you, as a director, have any intention in retaining your earnings, to relieve Mr. de Mille or any of the stockholders from paying surtaxes?

A. No. I paid surtaxes—taxes on my distributive share, I think Mr. Leming called it, in the partnership myself.

Q. I am asking you about the corporation. Were any of the earnings retained with that intention?

A. Never. As Mr. Fisher said, that matter was never discussed.

(Testimony of Neil S. McCarthy.)

Q. Was it intended at the time the corporation was organized that the earnings would be accumulated with the intention of relieving Mr. de Mille from surtaxes?

A. It was not. Neither Mr. or Mrs. de Mille, who was the next substantial stockholder. If I might elaborate on that, what we wanted to do—we tried to figure on what was the least amount we could accumulate before we could start the financing of our own pictures. We figured \$4,000,000.00 was the least amount. I believe it would have been too small, looking at it now. We were directing all this time [244] our efforts, and I continued to direct my efforts even after I ceased to be a stockholder, in trying to help this company accumulate that much money because I had to negotiate the contracts for the distribution of our pictures and the financing of the pictures and I knew the handicaps under which we suffered by reason of having to go out to get that financing, not merely in the additional amount of money that it cost us, but in the things that the financiers always insisted upon. The financier always insists on meddling in the business and the development of the motion picture has today proven that the financier can not do it successfully.

Q. Would these financing companies pay you for the picture?

A. I tried to get money on a couple of occasions without getting it from the distributors although getting your money for the production from the distributor was a common practice at that time by the

(Testimony of Neil S. McCarthy.)

independent motion picture producers. The independent motion picture producers, as they are called, were those who did not have their own distributing organizations and their own theatres. The practice is for a producer to get a distributor who has to have a product to put through his distributing organization, which consists of selling agencies throughout the entire United States. Those selling agencies and their activities are quite broad. If they do not have a certain amount of product to put through their selling organization or distributing organization they lose money. They want pictures to [245] distribute. They finance the independent producers. They furnish the money for the production of the independent pictures to get them. Their terms are, in many instances, harsh. From their viewpoint they feel justified in keeping a control on what is to be produced because it is their money that is being put in, sometimes.

Mr. MACKAY: That is all.

Recross Examination.

By Mr. LEMING.

Q. In the making of pictures by the taxpayer, did they make any pictures which were not covered by the contracts in evidence?

A. I do not think so. I think you have got all the contracts.

Q. And all the contracts are in evidence under which pictures were made by the taxpayer?

A. I think so.

(Testimony of Neil S. McCarthy.)

Q. What was your principal function as an associate of Mr. de Mille in the partnership and in the corporation?

A. I took care of all the legal business, which you would describe as strictly legal business. In addition, I negotiated the contracts. If there were purchases of property or sales of property I handled that. I do not mean I found the purchaser but I handled those. In the contracts for the distribution of pictures I negotiated them largely myself. I think the terms were discussed by the Board, the main terms as to how much they would charge for distribution and [246] how much the return would be under certain conditions. I would then go on to New York and complete the negotiations, as a rule.

Q. That was a lawyer's job?

A. No. I think a modern lawyer is more than a lawyer. He has to be an executive as well if he is going to be of any real value to his client. The old idea was that the client asked the lawyer what the law was and he said thus and so and the client had to guess what to do. I think the modern lawyer has to tell not what the law is to his client but he has to tell him what to do and go ahead and do it.

Q. He has to carry out the ideas and wishes of his chief.

A. If I may presume, and I hope you do not think I am doing it, many of these contracts which I negotiated were rather my ideas. I never closed them, naturally, without being approved by the company eventually.

(Testimony of Neil S. McCarthy.)

Mr. LEMING: That is all.

The MEMBER: These gentlemen have asked you questions all day. Let me ask you one or two. Beyond the possible pride that you had in wanting to make your own pictures and the possibility of greater financial reward, had you been able to make your own pictures and distribute them was there any other motive for attempting to put this in shape so that you could make your own pictures?

The WITNESS: Yes. One of the most important was that we could make more money. For instance, Mr. de Mille, as a director, [247] never could have gotten the contract like the Pathe deal. In that deal we made over a million dollars just in the stock, and some of the compensation in the form of stock. We netted this corporation over \$1,000,000.00 on that item alone within a year or a year and a half, and upon which the corporation paid a tax. A director never could have gotten into such a transaction.

The one other vital point, too, to me, in the production of pictures was that, as I say, the distributor expects where he is putting out money to have something to do with it, and the old Lasky Company was in a position to dominate us and they were preventing Mr. de Mille from making the type of picture he felt he should make. It is extremely important. I am afraid that I probably am not getting the picture as I know it to be to the court. That is one of the most important and vital things in this business, particularly with our company. I consider

(Testimony of Neil S. McCarthy.)

Mr. de Mille probably the best thinker in the business. He has proved in the years that I have known him, which has been practically since he started in business, that he is always ahead of the procession. Take the situation as to the Metro. We did not want to make a musical picture such as *Madam Satan*. Because we had to borrow the money from them they were in a position to dominate us and to require that we make that type of picture. We did and the picture was not a success. They condemned us in the industry for making that picture, Metro did. For over a year we could not get a contract with anybody to produce pictures for them, and yet they [248] offered Mr. de Mille personally a contract as a director.

The MEMBER: You started out by telling me of the difficulties you had up to this first contract with Lasky and then you went on to the contract under which *The Ten Commandments* was made.

The WITNESS: No. *The Ten Commandments* was under the first.

The MEMBER: All right. You had to suspend operations there for a day or two?

The WITNESS: Yes.

The MEMBER: You told me under the second contract with Lasky you had similar difficulties although they did not come to such a violent point, perhaps.

The WITNESS: That is correct.

The MEMBER: You intimated with your Cinema Corporation contract that you had quarrels.

(Testimony of Neil S. McCarthy.)

The idea I gathered is that under every contract you made from 1920, the partnership contract, which was taken over by the contract down to 1928——

The WITNESS (interposing): Down to the present, your Honor.

The MEMBER: I think 1928 is as far as you went in your testimony concerning the Metro contract. I gathered you had difficulties under every one of those contracts and a constant threat that you would have to drop them and look elsewhere for your distributing connections and your financing connections.

The WITNESS: That is correct.

The MEMBER: Is that the picture you intended to give me? [249]

The WITNESS: That is right. We were never secure as long as we had to borrow money for those pictures at any time.

The MEMBER: I hope my questions have not started you both off on a long lane.

Mr. LEMING: I have one, if your Honor please.

The MEMBER: I thought perhaps you would.

By Mr. LEMING:

Q. Did I understand you correctly to say that the million dollars which you say was made in the Pathe transaction, was from the sale of stock?

A. That is correct; approximately one million dollars.

Mr. LEMING: That is all.

The WITNESS: I want to explain that. That was stock which we got in connection with—I do

(Testimony of Neil S. McCarthy.)

that because I do not like an improper interpretation of the plain statement when it can be properly explained. That stock was stock which we got as a part of the contract whereby we agreed to go into the Pathe organization, and when we left the Pathe organization we disposed of it.

RUSSELL TREACY

being recalled as a witness by and on behalf of the petitioners, and having been previously duly sworn, was examined and testified on direct examination as follows:

I have the books in my hand of the Cecil B. De Mille Productions, Inc. Turning to the stock record the sum of \$10,000.00 was paid for [250] the Ince Studio as an initial payment on the option contract. That check was paid on January 23, 1925, Check No. 1137, in the sum of \$10,000.00. The books show an additional \$40,000.00 was paid. The entry states, "On April 23, 1925, \$40,000.00 was paid; Check No. 1424." [251]

CECIL B. de MILLE

being called as a witness by and on behalf of the petitioner and, having been first duly sworn, was examined and testified on direct examination as follows:

By Mr. MACKAY:

Q. What is your occupation?

A. Producer of motion pictures.

(Testimony of Cecil B. de Mille.)

Q. You have been a producer of motion pictures how long?

A. Twenty years.

Q. Where did you begin producing pictures?

A. Hollywood, California.

Q. You are the President now of the Cecil B. de Mille Productions, Inc.?

A. I am.

Q. You have been since its organization?

A. I have.

Q. Were you ever associated with Jesse Lasky?

A. I was.

Q. Did you assist in the organization and development of the Jesse L. Lasky Company?

A. I did.

Q. Will you please relate to the Board how that began and how you participated in it, as briefly as you can?

A. I was a producer of plays in New York and a playwright. Jesse Lasky was a producer of vaudeville acts and had a new entertainment called the Folies Bergere, which he had opened on 45th Street.

[252]

In 1913 I had a terrific failure of a play I had produced by Mary Roberts Rhinehart. Jesse Lasky had a terrific failure with the Folies Bergere; and Samuel Goldwyn, who was a glove manufacturer, found the Government had just taken the tariff off gloves.

(Testimony of Cecil B. de Mille.)

Mr. Lasky and I were somewhat disconsolately seated in the Rector's Grill having lunch and we had been friends of very long standing, and he said, "What shall we do?" I said, "What is the most thrilling thing you can think of?" He said, "Let's go into pictures." I said, "Let's." He said, "Do you know anything about them?" I said, "No." He said, "Neither do I. From the pictures I have seen we are just right for the business."

Just then Mr. Goldwyn walked by mumbling something. We had turned over the bill of fare of the old Rector's Grill and were forming the Lasky Company on the back of it, seeing what money we had left from our two theatrical wrecks across at Broadway. We asked Mr. Goldwyn if he wanted to go into the motion picture business. He said he did. He was Mr. Lasky's brother-in-law. So we sat down and formed the Jesse L. Lasky Feature Play Company, with the first capital of \$20,000.00, if I recall rightly. We were each to put up \$5,000.00, each of the three of us, and to sell publicly or find someone who would take the other \$5,000.00.

I was to have charge of production because I was a producer of plays and a playwright.

Mr. Goldwyn was to have charge of distribution because he was used to selling gloves and knew something about salesmanship.

Mr. Lasky was to keep the home fires burning with his vaudeville so we could both live and eat during the interim. [253]

(Testimony of Cecil B. de Mille.)

We all went out to sell the other quarter of the Lasky Company.

I first asked my brother if he would take it and he said he would save his money to pay our fare home.

I then asked Dustin Farnum, whom I had engaged or wanted to engage to play leading part in the first picture, which was to be the Squaw Man. I had engaged him at \$250.00 a week. I asked him if he would rather take a quarter interest in the Lasky Company than have \$250.00 a week for four weeks and he said he preferred the \$250.00 a week for four weeks.

We tried various relatives with little or no success. We finally found Arthur Friend, an attorney, I think a distant relative of either Mr. Lasky or Mr. Goldwyn, but I am not certain on that point, who was able to take a small portion of that, and the rest was apportioned to the three of us. I could not take it because I did not have money enough. In fact, I did not have money enough to pay the \$5,000.00 that I had already subscribed to, which caused some difficulty.

I left for the coast. I arrived 20 years ago today. I believe, and I rented a barn on Vine Street and Selma Avenue, in Hollywood, which was then a series of orange groves. I did not rent the whole barn because I could not afford it, but I rented that portion of the barn where the gentleman washed his carriage, from Mr. Stearn, who occupied

(Testimony of Cecil B. de Mille.)

the estate opposite, and the cow stalls and the horse stalls were used for dressing rooms, made into dressing rooms, and the platform, where I imagine hay was piled or something, was made into a stage, and there we started production of our first picture.

We had \$20,000.00 capital and the first picture cost \$40,000.00 or \$37,000.00, I think, to be exact. We were immediately in financial distress, [254] and Mr. Lasky and Mr. Goldwyn went through the country selling the rights of this picture to various state right buyers and getting sufficient money in advance from them to set me to finishing the picture.

The picture was finished in that way and it was a success. I remember a very momentous evening with Mrs. de Mille, Mr. Lasky, Miss Lasky, who was one of the founders of the company, and myself, celebrating joyously when we found the profits of the company it looked might reach \$40,000.00 in one year.

We then found that we were in some grave difficulties—may I go back a moment? I forgot a very important point.

When we started to make the picture we found the Patents Company or the General Film Company had complete control of the industry and we could not make pictures without a franchise from them, which they would not furnish us. We went to get this franchise from them, Mr. Goldwyn, Mr. Lasky and myself, and they said, "Why should we

(Testimony of Cecil B. de Mille.)

give you a franchise to make pictures when we can make them ourselves?" I explained that I thought I could make a quality of picture they did not make because their pictures consisted mostly of two-reel pictures in which during the first reel the Indian chases the cowboy and during the second reel the cowboy chases the Indian and kills him at the end of it.

I felt that through that medium really great drama could be brought to vast masses of people. The film seemed to me to speak an international language and I felt that great European markets could be developed much farther than they had to that date.

Anyway, the General Film Company would not give us the franchise, which meant that none of their theatres would take the picture. [255]

We had a few serious discussions as to what was best to do and we decided to go ahead and make the picture anyway and they commissioned me to make it so well that people would have to see it if we had to run it in legitimate theatres or barns or wherever we could show it, and we succeeded reasonably well with that. I think it was the first or second—the second big feature ever made. The first, if I remember rightly, Mr. Zukor made independently with Sarah Bernhardt, and this was the second feature picture.

Those two pictures revolutionized the entire industry. They upset the General Film Corporation. They upset the Patents Company and a new era

(Testimony of Cecil B. de Mille.)

started in motion pictures, which was known as the growth of the feature picture.

We immediately started to manufacture pictures, getting our financing from the exhibitor and the distributor. The distributor was different from a distributor later when the three elements were merged. There has always been a great battle in the motion picture industry between those three units as to who was going to run it, the exhibitor, the distributor or the producer.

We increased our capital to \$50,000.00, as I recall, then to \$500,000.00. We saved our money, every nickel of it, so as to rid ourselves of the distributor-exhibitor financing and be able to finance our own pictures because banking credit at that time in motion pictures was nil. When I first went to Hollywood as a motion picture man the bank would not take my private account when they heard that I was in the picture business. They did not want my money at any price. Later we carried quite a balance in that bank. The picture people were pariahs at that time. [256] The people almost cried "unclean" when you went down the street.

This company developed very rapidly. I assumed the office of director general, I believe. I was a member of the board of directors. We had to make 20 or 25 pictures a year. Mr. Lasky came from New York to assist because I could not handle the situation alone any longer in the production of the

(Testimony of Cecil B. de Mille.)

film. I think that was the end of the first year or the second year some time.

For several years we proceeded this way and were very successful. We were able to avoid borrowing from banks and our financial structure was good and healthy because it was very simple and very clean. We made the money we needed and used it in pictures and we were able to pay small dividends. We were able to increase salaries considerably. I think I started out at \$75.00 per week—not salary; expense money. I got no salary at the start. I think for some time I was furnished \$75.00 a week expense money.

After the first two or three pictures we got together and voted ourselves \$200.00 per week salary, as I recall it, Mr. Lasky, Mr. Goldwyn and myself.

I should like to add that two women played a very, very important part in the structure. They were Miss Lasky, who was associated with Mr. Lasky in his activities before he went into the pictures and Mrs. de Mille, who was associated with mine. The four of us formed a producing unit in everything we did, and when they did a vaudeville act or Folies Bergere we were to pass on it, and when we did a play they were there to give us what assistance they could. The early part of this sounds like a rather Utopian story but it is not. The moment profits began [257] to develop trouble began to develop. There seemed to be considerable rivalry between two of the chief executives as to who was going to control the organization. That trouble alarmed me at first—it

(Testimony of Cecil B. de Mille.)

was quite a short time after our start at Hollywood—because one of the gentlemen selling the pictures said he should be the head of the institution and the other gentlman, who had assumed the position of contact with New York deals, and between New York and production, which was myself, considered that to be the important end of it. These two gentlemen had considerable rivalry and I saw that there was going to be very serious trouble.

On many occasions Mrs. de Mille, Miss Lasky and myself saved the company from disorganization because we were on the outside of the trouble between the two men. Miss Lasky was the wife of one of them, Samuel Goldwyn, and a sister of the other, Jesse Lasky, and it was very much a family affair.

However, the company progressed extremely well, so well that—I have forgotten the exact year—I will have to ask help on dates. Mr. Zukor, who had formed the Famous Players Corporation, formed of great stars, was the only rival we had. He was selling these big entities to the public and we were selling a major type of production to the public. We were not paying particular attention to the sale of individualities but to the sale of great pictures. He was paying particular attention to the sale of personalities rather than the pictures.

The rivalry between those two became very keen and it was necessary for an exhibitor to have both programs, so that the gentleman in charge of it decided to merge the two companies. These two companies merged [258] and stock was given to the

(Testimony of Cecil B. de Mille.)

stockholders of each for their holdings in the two producing companies. Mrs. de Mille received stock for her Lasky stock, I received stock for mine, and Mr. Lasky for his, and Miss Lasky, and Mr. Zukor, etc.

The details of the struggle between this Famous Players Lasky Corporation, which had become the giant of pictures, and the Paramount Company, which had become the giant of distribution, I do not think enters into this case in any way and I will not take further time with it. But the moment this amalgamation was made—I was made Director General in charge of production of all of it. Mr. Goldwyn was in charge of distribution. Mr. Lasky was what was called head of production, which was going back and forth between New York and the coast providing and getting material for me to produce on the coast, and Mr. Zukor, the President of the whole organization. There also entered then the Pallas-Morosco Company and the Bosworth Company; and one other company that was controlled by Frank A. Garbutt of Los Angeles was brought in. Those companies were brought in because they had been making pictures of a high enough class to warrant their joining such a splendid company.

The moment this organization was formed an unfortunate executive situation developed immediately. Politics came into it. The subject of control immediately came to several minds in the company. It is not necessary to go into the full detail of that struggle but the result was that Mr. Samuel Gold-

(Testimony of Cecil B. de Mille.)

wyn was either forced out or left the company. He had, however, his stock at the time. It was necessary for the other executive, Paramount, to pay a very, very large sum of money for that stock of Mr. Goldwyn's. I think the sum was \$750,000.00, which was a [259] large sum for pictures in those days and is, again, today.

The dropping of Mr. Goldwyn from the company showed me what could happen to every strong man, no matter how necessary and how fine and very vital he was. Mr. Goldwyn was a very, very fine showman; none better in the business. His elimination showed me very grave possibilities. Also, the fact that he was able to get that \$750,000.00 for his stock showed me other possibilities. Then I began talking with Mrs. de Mille about the necessity of protecting ourselves because we began to see them going one at a time. The next to go I think was Bosworth, who was one of the lesser companies to come in.

Then later Arthur Friend, and one at a time I saw these individuals wiped from the picture.

Mr. Goldwyn found himself without any organization at all—flat—nothing but \$750,000.00, but \$750,000.00 can not do the things that the right organization will do. To make a picture you have to have a lot more than money. Goldwyn had no organization, no stars. He had to take his \$750,000 and put the best organization he could get together, which was done hurriedly, because it had to be done hurriedly. He could not get star material on account of—you can not go out and pick up an organization.

(Testimony of Cecil B. de Mille.)

There are no great makers of motion pictures lying around idle. They are all contracted for or tied up. You either have to create them yourself or you have to buy them when they are free, and they are seldom free. As a result Mr. Goldwyn's company went into bankruptcy. He lost the \$750,000.00 he had. He had got the money for the stock and the fact that with that money he had been able to do nothing but get [260] himself adjudged a bankrupt showed that he was very weak in two spots. The fact that he had been able to get the \$750,000.00 for the stock showed Mr. Zukor must have been weak in some spot.

Mrs. de Mille and I talked this over at great length and then brought Mr. McCarthy into it and decided it was vitally important to protect our own interests because we were known at that time, I say with all modesty, as perhaps the most successful producer of money-making pictures. We had only one rival at that time, who was Mr. D. W. Griffith. We have more now. We felt that it was of vital importance that we immediately start the formation of an organization which would have two functions, one was it would protect us from attack and the other was that if we were attacked and defeated we would be in a position to immediately make our own pictures if we had organization and finance. Mrs. de Mille and I talked about it alone. I talked about it with Mrs. Macpherson. I began to feel around to see how the different members of my own staff might feel about joining me in such an organization. Then sometime I think in 1918, perhaps two years before the partnership was formed, Mrs. de Mille and I got

(Testimony of Cecil B. de Mille.)

Mr. McCarthy to come out and we laid the proposition before him that we wanted to form a corporation. The de Mille Company in New York, the largest play brokerage company in New York, had been a corporation. I was general manager of that. I know something of the handling of the corporation. Mrs. de Mille and I felt that it was of vital importance to us to build a company that would take care of us, to have an organization that would some time work for us and that we would not have to work for always. [261]

The history of the business as it was being shown around was—It was very much like California in '49, the early days in motion pictures. Money was made in enormous sums. Individuals rose and fell with astonishing rapidity. Enormous sums of money came into the industry and were made and lost; made through brains and good direction of artists and lost through bad management and bankruptcy.

Mr. McCarthy advised me of partnership for the organization. I rather favored a corporation, but I had a higher opinion of Mr. McCarthy as an attorney than he has of me as a director, so the partnership won.

The situation after that first talk developed very rapidly in this way—to show you the kind of difficulty that was arising between the Famous Players organization and ourselves, they had wanted to follow a certain trend, what they call a cycle, that is, if somebody makes a play of the French Revolu-

(Testimony of Cecil B. de Mille.)

tion, every organization rushes and makes plays of the French Revolution. If somebody makes a success of a play on Marriage and Divorce, everybody rushes and makes a play on Marriage and Divorce, so the public never gets to see a play at the theatre but what it is on marriage and divorce or something like that, or it is a play on the French Revolution, and I think that is very poor in the show business. However, that is only personal opinion. A great many good executives disagree with me on that.

The enormous urge of a big success, a picture that grosses hundreds of thousands of dollars and brings acclaim all over the United States and all over the world, has a psychological effect on the man who is handling the money. He says, "They don't want beans, they want rice." You say, "They will be so sick of beans that they will not want beans all the time; give them a course of rice, and then you can give them beans." That is [262] what you have in the motion picture business. It is hard for the business mind to follow that because the mind of the showman and the mind of the business man, as Mr. McCarthy already testified, are sometimes different.

In this case Mr. Zukor had laid out a great advertising program of the pure and beautiful type of picture, a little sunshine type of picture. He was going to make some beautiful things. He had spent a good deal of money advertising this type of picture and he started making it. I felt that it was time to immediately come in with something that would

(Testimony of Cecil B. de Mille.)

upset the public materially because you can only give them sugar for a certain length of time and then they want something else. I made a picture called *Old Wives for New*, which was written by David Graham Phillips. They immediately expressed displeasure at the title and the idea of the story. I insisted upon forcing it through.

When the picture was completed I had no one that anyone had ever heard of in the cast except an old character actor named Theodore Roberts. Otherwise the cast was entirely new.

We went out to a little town to preview it because the company was terribly annoyed over the entire situation, and Mr. Lasky said he considered it far better that the picture should not be released at all, but that they should stand the loss. I took the company out on my own and we arranged a preview in a little suburb. A preview is one night you go out to try out a picture to see what its weak spots are, where the audience is bored and where any changes are necessary before it is released, because once it is out it is impossible to change it.

Before the first show was through of this picture the manager had come back and said, "I must keep it for a second show. The people are all [263] coming out and telephoning home to their wives or to their husbands and friends to come right over and see it."

This little picture was retained for I think three nights, and I asked Mr. Lasky to go out to this place to see it but you could not get in the theatre. They were coming in from other towns, etc., to see it.

(Testimony of Cecil B. de Mille.)

In spite of all of that they were terribly upset about the picture. It was an enormous success but Mr. Lasky went to Mr. McCarthy and told him that he wished they could get rid of my contract after that picture. I did not know that until some time afterward, but it was not difficult to feel the situation. I was not popular with my brother executives and I realized my head would probably be next to fall. So we immediately started the formation of a company, the gathering of a staff.

Shall I take this time, your Honor, to explain what a staff is?

The MEMBER: I think I had better know about it.

The WITNESS: Because the staff plays a very important part of your picture. It is the staff that makes the picture. The director is merely the man who sees that the staff—the producer is the man who sees that the staff does its job and the director carries out the work of part of the staff, and when it is done hands it to the rest of the staff to complete when he is through.

For instance, the first thing you do in making a picture is you have to find a picture to make. You have to get the story. The individual who procures the story is in the scenario department—not the writing of it, but the procuring of the material. [264]

All the novels have to be gathered, and all the plays and all available material. We have ceased to consider original material because if you obtain an original manuscript and there is a character named

(Testimony of Cecil B. de Mille.)

Jennie and you have produced a story with a character named Jennie you are sued for plagiarism. I will say for the benefit of the record that that is a slight exaggeration but not far wrong.

The material, therefore, must be published or from a standard author of reputation or a produced play. With us Mrs. Adams filled that particular position. It is of vital importance because the material that you produce has to be a little ahead of the public sentiment. You have to be six or eight months or a year ahead of it in making a big picture because it takes you practically a year to make it and, therefore, it takes someone with an appeal for the public and a keen understanding of drama to know what material to use because it is impossible for the producer to read himself all the material there is and the reader comes to him with two or three subjects which he has garnered from all this material and lays it before him. He finds a writer who he thinks is capable of handling that particular type of subject because different writers are good at different types of subjects. That writer has to transpose the story into picture form. That does not mean you take chapter 6 of the book and break it up into scenes. It means the entire construction may have to be altered. It is the work of a dramatist, and a very important one, because your medium is different. It would be like taking a poem and putting it to music. You can not do it by punctuating the poem. You have a totally different medium to work from. Good writers are scarce. [265]

(Testimony of Cecil B. de Mille.)

After it is written there is next the matter of making it. It then goes to the director, the production manager, who breaks it down for budget, what it will cost, what the expense of it will be, the important figuring that can not be overestimated because it is very easy to go wrong one million dollars in the making of a budget. So that man has to be a man of long experience in pictures and keen knowledge of the type of picture that you are doing and the conditions under which you have to operate. He has to know the difference between cost of a set at a location. If you are shooting a set on location or on a desert those are two vitally different things; whether you are 100 miles from the studio or 20 miles; whether you are going to use 16 \$5.00 people and 20 \$7.50 people and 50 \$25.00 people in a mob. All of that he has to know and it has to be very carefully broken down and set up to make an accurate budget. That man is of vital importance. Then the art director, who has to draw the sets and design them. That, of course, is a vital thing because you do not merely draw a room. If we were going to do this court room it would cost so much to do all four of these walls. A good art director would not build all four of these walls. He would build from that window to this (indicating). He would take in your desk and he would place his camera back there (indicating) and not build any of this (indicating), so that he shot over the heads of the audience and showed you, and the audience's imagination will fill in the rest of the room. When he has to turn around

(Testimony of Cecil B. de Mille.)

to shoot Miss Rosson or Mr. McCarthy, who will answer your questions in the scene, he would only have to build that corner (indicating), so he would take this same corner and swing it around over there (indicating) and remove [266] this desk (indicating), and then we have this entire court room and you would have seen some part of all four walls of it.

It is simple in the case of a court room but if you apply that to Cleopatra's Palace or Nero's burning of Rome, or the Circus Victorious of the Orient, it is a very vital thing and a thing that can save you thousands upon thousands of dollars or cost you thousands of dollars. Those men have to be trained and educated. You can not find them. They are very, very rare.

Then comes your costuming department. You can not go into a dressmaking establishment and say, "Make me Nero and Tigellinus and Cleopatra," because they don't know what you are talking about. You have to have first an artist make sketches of Nero and Cleopatra and Caesar and Marc Antony. Then you have to have somebody who can carry out those sketches and have a wardrobe organization that has made something besides French hats, because French hats and tiaras are different.

All of that is doubly important in the making of a big picture.

Then comes the expert who builds the set after it is made, the construction engineer. You take a set like the Temple in the King of Kings, a set as

(Testimony of Cecil B. de Mille.)

large as this building of the Hall of Justice out here, say 2,000 people are working below it and a strong windstorm comes up and that set blows down; there are 2,000 people below it working in the square and it would be very unfortunate.

Takes the Gates of Pharaoh in the Ten Commandments, which had to be erected in the desert, where you could not even get an automobile anchored against desert winds blowing in with a very high velocity, a [267] set over 90 feet high, presenting an enormous flat surface against the wind, it all had to be anchored by very heavy deadmen in the sands, every pound of material of thousands of pounds, and every foot of lumber of millions of feet that were pulled in there for that setting because it was a gigantic thing—all of that has to be handled by this man who has to construct it, and it has to be right. Suppose the set fell down and did not hurt anybody. You have an expense out there as we had in making the Biblical portion of the Ten Commandments, where it cost us \$50,000.00 a day. You can see what a miscarriage of half a day can mean. It is a very, very important point.

Then there is the research department. For instance, you can not go anywhere and get the detail on Cleopatra. You can not press a button and say, "Tell me the full data on Cleopatra. Give me everything that Nero wore. Tell me what kind of a bed Poppea, the wife of Nero, slept in. The research department has to provide all of that for you.

(Testimony of Cecil B. de Mille.)

Then comes what we term the prop making department that has to make that. You can not send down to Montgomery Ward & Company for a 500 room theatre. You can not send to Sears Roebuck for 50 gross of Egyptian bows nor to the Oliver Plow Company for 400 Egyptian chariots. Those things have to come out of only an organization prepared to do it, and you haven't forever to do it. You have a given time. All of those things have to function exactly together just the way you would plan a campaign for a battle which has to be fought.

Then the assistant director, who is the man who has the job of seeing that all the departments coordinate. [268]

The casting department is another feature that I would like to cover because the head of the casting department is very vital in the making of a picture because he has to know everybody in the industry. He can not be anybody. He has got to be a man who knows everybody in the industry and knows that one actor is right for one part and another actor is right for another part, and not to get them mixed. If you get them mixed the result is unfortunate. That man has to have a knowledge of dramatic technique. A good casting director is very, very hard to find. He has to cover all the people all the time. He has to be able to say, "I saw a little girl three nights ago in an R. K. O. picture who is admirably suited for that and I think she has promise and ability and we should make a trial of her."

(Testimony of Cecil B. de Mille.)

He has to keep the producer informed at all times of all new talent as it comes in and the availability of old talent and the advisability of which talent to use because when you are using as we do in those pictures—in the last three pictures that I have directed this year produced by the de Mille Productions, we used 13,700 and some people—we employed 13,700 and some people, not all actors.

The head of transportation is an important factor because the movement of all this stuff, of course, is vital. If you have got 2,000 people out on the desert with all the paraphernalia and so forth and the food did not come out, or the film has to be rushed back from a location, developed and printed and carried back to the location for inspection the following day—it is necessary to have a police escort on some of that to cover the time necessary to elapse—it is the work of an army. [269]

I am not desirous of giving a lecture on motion pictures. I am merely trying to show that it is organization that makes the picture and no individual.

A figure of importance is the hair dresser. That sounds like a beauty parlor but it is not. The hair dresser has to know the hair dressing of Cleopatra and Poppea. I will sit down with her and say, "Give me ladies in Paries." So we take Gloria Swanson and see what we can do with her hair. If we find her nose turns up we have to do something to balance that with her hair. For instance, the hair dresser works out a band that comes around her hair and that starts everybody to wearing bands in the hair.

(Testimony of Cecil B. de Mille.)

Those things are all great styles argument to an exhibitor seeing a picture. He knows that women will be interested in it. The hair dresser is very important and they are very, very hard to get. They are just like any modern designer such as Chanel or Poriet.

Mr. LEMING: May I interpose long enough, your Honor, to say that this is all irrelevant and immaterial and that we object to it from that standpoint, but I do not want to deprive your Honor of any information you may get in this fashion. For that reason I have sat quietly, but I want the record to show that my failure to object previously should not be construed as assent or acquiescence to the materiality of any of this testimony.

The MEMBER: I appreciate your consideration for my interest in the matter. I confess I am very much interested. It is just like a trip to Hollywood. Why is it not material? This witness is telling me about the organization necessary to the production of pictures, and his counsel tells [270] me, and the testimony is that the purpose in organizing this corporation and the purpose in withholding its earnings was to build up a staff so it would be in a position to make its own productions and finance its own productions. In that case I think it is necessary that we know what a staff is, perhaps not in such great detail but certainly I think it is material.

Mr. LEMING: It seems to me if anything is material at all it is what was done here and not a picture of what might have been done or could have

(Testimony of Cecil B. de Mille.)

been done. There is no evidence here that any surplus of \$100,000.00 or any other sum, as I recall, was necessary for any such purpose as he has been discussing. I take it these contracts in evidence show how these pictures were made and under what conditions they were made, so far as this corporation is concerned.

The MEMBER: The evidence has also shown a staff was built up, whether it is a complete staff or not, I don't know, or I haven't heard yet the description of a complete staff, but certainly some staff was built up. It has been compared to a rival organization and the personnel of the staff of this petitioner compared as to relative position with the personnel of that staff of the rival company.

Mr. LEMING: Whatever staff they had, if your Honor please, ought to be reflected in the expenditures which are in evidence. It seems to me that that answers this sort of a question. What did this corporation do? What did it expend? What was it necessary for it to keep on hand to expend? [271]

The MEMBER: I understand one of the issues is the propriety of the salaries paid certain members of this organization.

Mr. LEMING: I beg your pardon. There is no such issue before the Board.

The MEMBER: Isn't that one of the matters you stipulated?

Mr. MACKAY: Yes.

The MEMBER: It was stated to me by counsel for the petitioner as one of the issues in the case.

(Testimony of Cecil B. de Mille.)

Mr. LEMING: Not an issue for decision by the Board.

The MEMBER: It still is until your agreement is in. There is nothing before me now.

Mr. LEMING: The parties agreed on certain deductions and eliminations and I believe in some cases additions to income. I don't want you to understand that this testimony is directed to any such point as that.

The MEMBER: No, but our discussion was. However, there is no need to enlarge the record with that. It is my view of the matter that some information respecting the staff necessary to a company capable of producing and financing its own pictures, in view of what the evidence has been, and in view of the theory of the petitioner's case, is admissible here, and, therefore, I shall overrule your objection and permit the witness to continue.

Mr. LEMING: May I note an exception?

The MEMBER: Exception will be noted.

The WITNESS: The chief electrician is more important than that sounds. He is not just a man who throws switches, and so forth. The [272] chief electrician has to point with lights. That is, we take a large set where there are perhaps 175 lights. By lights I mean these enormous electric machines for throwing these very brilliant white lights. They are arranged around on very heavy parallels above the set. They are in the doors. There are all types of combinations for light. You can put a light in the back or there would be one under that desk (indi-

(Testimony of Cecil B. de Mille.)

cating) to light your face, one under this desk, one back of the water pitcher, one to catch this man's face. These lights would have to be covered so as to give the right effect. There would be a light here and light there (indicating).

There are equipment and paraphernalia that has been developed out of 15 years of use until we can swing lights in very astonishing ways and almost like Aladdin did his lamp.

The man who is in charge of that is the head electrician and when the camera man has picked his setup, which is the position where the camera is to go, because the camera changes perhaps from 16 to 20 times, the director will say, "I want to shoot this way," getting in that window and that half of that (indicating). The camera man sets his camera there. That becomes the lineup. While he is moving his paraphernalia he has to show the electrician where—the point where each one of these 150 or 20 or 75 or 180 lights are to go, and if that is not done right, a half a day or whatever it may be, would be lost.

That head electrician has to know how to paint with light. He has to know his art.

Then the camera man takes his camera and improves that by various—we have what we call inkes, which are little tiny hot lights that throw [273] a brilliant light in the face from anywhere they are, almost like a machine gun.

There are lights that have various types of devices hung over them so that one light comes out of the bottom and not out of the top, and on others where

(Testimony of Cecil B. de Mille.)

it comes out of the top and not out of the bottom, and so forth.

Here you have constructed a painting of a set or of a palace or of a street or whatever it may be.

That is a very, very important position and can cost a great deal of money if it is weakly filled. Those men are very, very scarce and they are very hard to find because you have to have an electrician with an artist. That combination does not always go together, except perhaps with Thomas Edison. He is probably the best example of that. The camera man is, naturally, perhaps the fourth most vital function in the making of a picture. That man must be an artist and a mechanic because if his exposition is wrong there is no way of telling it until the day is over. If his exposition is wrong an entire day's work can be lost. If he has not corrected the electrician well and the light is too hot in the face of the star and you get a white blur instead of a beautiful face or if he has lighted her so he has not taken care of her eyes properly and you get either two black holes or lines under her eyes or wrinkles over her brow, and so forth, that day's work is lost, and that day's work may have cost probably a minimum of \$20,000.00 in a big picture. Consequently, that man is a very important factor and they are very few who are great camera men.

Then when the picture is completed, that is, when we have finished photographing it—there is another vital factor, which is what we call [274] the special effect man. In other words, we will say that I have

(Testimony of Cecil B. de Mille.)

to have an earthquake; I am going to burn Rome; I am going to open the Red Sea. You can not just send for the head carpenter and say, "I am going to open the Red Sea," or "I am going to burn Rome." You have one department that does nothing but that. That man is vital.

Because we have talked so much about the Ten Commandments I will take that as an example. The opening and closing of the Red Sea in that cost \$105,000.00, to get that effect. It is on the screen probably not longer than maybe 40 to 65 or 70 seconds. The accomplishment of that has to be the work of an engineer, the work of an engineer skilled in many branches of engineering because that is a composite of 22 exposures. I will give you an example of what I mean by that. Shall I?

The MEMBER: Go ahead.

The WITNESS: For instance, in the creation of that giant wave, and that is a terrific wave, a really big wave that rolls over the Red Sea and engulfed people, to make that wave we built two 10,000 gallon tanks at a height of 40 feet in the air. Then we had a steel curved sheet built and placed under those tanks. Those tanks had trip bottoms that opened instantaneously so that we could drop 20,000 gallons of water at the same instant into this steel sheet which was curved.

We set our cameras up under that and slightly to one side below the height but slightly to one side so as the water dropped into this steel sheet it immediately took momentum and went up this rolling

(Testimony of Cecil B. de Mille.)

surface, which threw it like a ball into a gigantic curve and landed it practically over the camera. That was only one exposure. When we needed to separate it part of the separation was the reversing of that film. In other words, [275] we rephotographed it backward. We put the film in the camera backward and dropped another 20,000 gallons, but as it was photographed backward you saw the end first and you saw this mass of swirling water and saw it gather gradually and draw away and pull up into the air.

That was the system by which just that one effect of that wave was brought about. There were 22 exposures on that film which was the dividing of the Red Sea. To get a man who can work that out is very, very vital. And there is something of that sort in every picture. There is some special effect that you have to do in every picture.

If you are going to sink the *Lusitania*, as I had to do once in the picture, that is a large order. I also had to have a large dirigible struck by lightning with people in it and had to show the inside of the passenger compartment and the people thrown around, and then show them jumping over the side in parachutes, and then follow the parachutes down from the Zeppelin to the ground.

That is what your special effect man is for. He works out methods of doing that and discusses them with the rest of the organization.

When the picture is finished, the shooting of it, it goes to the cutter.

(Testimony of Cecil B. de Mille.)

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(Testimony of Cecil B. de Mille.)

surface, which threw it like a ball into a gigantic curve and landed it practically over the camera. That was only one exposure. When we needed to separate it part of the separation was the reversing of that film. In other words, [275] we rephotographed it backward. We put the film in the camera backward and dropped another 20,000 gallons, but as it was photographed backward you saw the end first and you saw this mass of swirling water and saw it gather gradually and draw away and pull up into the air.

That was the system by which just that one effect of that wave was brought about. There were 22 exposures on that film which was the dividing of the Red Sea. To get a man who can work that out is very, very vital. And there is something of that sort in every picture. There is some special effect that you have to do in every picture.

If you are going to sink the Lusitania, as I had to do once in the picture, that is a large order. I also had to have a large dirigible struck by lightning with people in it and had to show the inside of the passenger compartment and the people thrown around, and then show them jumping over the side in parachutes, and then follow the parachutes down from the Zeppelin to the ground.

That is what your special effect man is for. He works out methods of doing that and discusses them with the rest of the organization.

When the picture is finished, the shooting of it, it goes to the cutter.

(Testimony of Cecil B. de Mille.)

By Mr. MacKAY:

Q. Didn't you miss one, the sound engineer?

A. Yes, I was really covering silent pictures first.

Q. All right. Go ahead.

A. I can put it in right here just as well because he is vital. That gentleman did not appear in this contract, because there was no [276] sound when we first broke with the Famous Players. Sound came in when the company started with Pathe. The sound engineer is not just a man who sits at a switch board and sees that the current is running through the microphone. A microphone is a very delicate instrument. That man is almost in the position of the leader of an orchestra, as far as sound goes, because if an actor says, "I won't do it," if that is his line and he emphasizes the word "won't" as loud as that, it will overload the microphone and you will hear a horrible raucous blur which you, I am afraid, have heard too often if you are cinema follower. The sound engineer has to know each line and how the actor reads it and control the volume at which he allows that voice to pass through the channels photographing, spotting where the sound is photographed. The sound is not photographed in the camera at all. The sound is photographed in a completely different building, even from where the scene is being taken. It is interlocked. The sound camera in the building is interlocked with the camera we are photographing with. It operates completely separately so that you might have a very good scene and if your sound

(Testimony of Cecil B. de Mille.)

engineer is not good the sound in that scene would not be usable. So that is a very important position.

When the picture is completed these thousands of feet that you have taken go to the cutter. The cutter puts it together. A picture, as you perhaps know, is not shot the way you see it.

I should say that cutting is perhaps 20 per cent of the making of a motion picture. A bad cutter can ruin a good picture and a good cutter can save a mediocre picture. There is no help for a bad picture. [277]

The cutter sets the tempo of a picture. In other words, the compiling of the score is done by the cutter. You shoot in short scenes. The director works in short scenes. Then there is the weaving together of the short scenes, and the interlacing of them, because sometimes you put one scene in the middle of another. You come to a closeup line that you have taken after you have shot a long shot. By "long shot" I mean photographing from a farther distance. The cutter controls all of that.

After the picture is cut then the director sees it and works with the cutter. Sometimes the cutter is in trouble cutting and sends for the director.

The last important member of the staff that comes to my mind is the script girl. She is not merely a stenographer. A script girl has to keep a stenographic record of every scene and of every movement made by a character. That is, if I am photographing what we term a long shot and a man takes a cigarette and puts it in his mouth with his right

(Testimony of Cecil B. de Mille.)

hand and takes it out with his left and goes on talking the script girl has to make note of that, not because we are interested in what hand he smokes with, but because when we come to the closeup, which may be shot within the next day, if that man in that scene which must cut in—the director must know that at this point when he said, “I am going to” he raised his right hand, putting the cigarette in his mouth, and when he said, “Divorce you, my dear,” he took it out with his left hand. So, if we did not have that record we might see a man starting to put a cigarette in his mouth with his right hand and then suddenly see him take it away with his left hand without ever having seen it go in his mouth. As for instance, when he takes his hat off; when the woman powdered her nose; whether in [278] starting up the stairs she started with her left foot or her right, and on what line and what word she made this particular movement.

The transcription of that sheet for each scene goes to the cutter so that when the cutter puts the picture in its final form and is getting that scene she or he has a record of exactly what movement the man is making when he says “I am going to”, so that he can make the sound track, which is on a separate piece of film when it is first photographed, match with the photographic part of it. She does not have to go all through the sound track and search for that but she knows when he raises his right hand he says, “I am going to” and she fits that on the film and can follow the dialogue without having to hear it.

(Testimony of Cecil B. de Mille.)

The position of the script girl is vitally important. [279]

By Mr. MACKAY:

Q. Mr. de Mille, you will recall last night that you were telling the Court just what your production staff consisted of. Did you completely finish that, or did you have one or two other members of that staff that you had overlooked?

A. There were two other members of the staff, or, rather, departments of the staff, that I did not touch, and I did not touch the executive side of the staff at all.

Q. Will you please finish with your producing staff and then follow with the executive staff?

A. Yes. I shall attempt to be brief.

What is known as the still man, is a man who takes the still scenes, still pictures of the scenes, as they are made. Those are used for advertising, for lithographing and for newspaper and magazine cuts. On the quality of those stills depends the quality of the magazines you are able to make. The ordinary photographer will do, because an ordinary photographer would perhaps fail to make the fine quality of still which would enable you to get your advertising into the finer magazines.

Then, last but not least, the publicity. The head of the publicity is, of course, a very important factor today. A very important factor is getting your product over to the public and telling them about it. Your public, in the case of one of these larger pictures, perhaps ranges as high as between

(Testimony of Cecil B. de Mille.)

four and five hundred million people. I should say that the attendance in the "Ten Commandments" and "King of Kings" ranged between four and five hundred million people. [280]

The publicizing to those people, of course, is of vital importance. You have to get over the fact to the public that it is not merely a moving picture but is a great motion picture.

The art of advertising, I do not need to explain to anyone today, because it is one of the fundamentals of business, and the fact that very good advertising men are scarce is shown by the remuneration that they receive.

Then, the executive forces consist of a secretary, such as Miss Rosson, who knows the business so well; Mrs. de Mille, who knows theatricals so well; Mrs. Adams, whose position I have covered, and my own as President and Director.

Q. Well, now, Mr. de Mille, you have spoken about just the—you have named who were on the executive staff of your organization; will you please go ahead now and give a little history of their background and of the part they played in the production of pictures?

A. Pictures are really made over a desk rather than on a stage. The producer may be likened to a general; he has an operating staff in the field like the general, the privates, who are, of course, a necessary force in the picture. The producer secures, coordinates and operates all of these different departments that I have named. The producer himself, of

(Testimony of Cecil B. de Mille.)

course, could not fill all of those positions; he could not accomplish all of the work done by those departments; but he must secure those departments and see that they operate and function properly.

To give you an example, the preparation of the Sign of the Cross took one year. The shooting of the picture took 40 days. It is like a great battle. You prepare for a battle for months, and the battle [281] itself may only last two days, but unless you have all of your ammunition stationed at the right place at the right time and the right persons in the right place at the right time, your battle will be lost and the fate of your war may be decided on the result of that battle. It is the preparation and the brains behind the line that are of paramount importance.

I think I have covered, Mr. Mackay, the functions of the executives.

Q. I think you have not yet told just what Mrs. de Mille did in that organization.

A. That is correct.

Q. Will you please tell the Court what she did?

A. Yes, Mrs. de Mille's career started as an actress back in the year 1900 or 1899. In fact, I first saw her here in Washington on the stage playing "Hearts are Trumps", produced by Charles Frohman, at the National Theatre. I do not know whether the National Theatre still exists now or not, but it was in the National Theatre here in Washington. I became acquainted with her there. I was in this company also and was writing at the time and she used to help me with my writing at that time. We dis-

(Testimony of Cecil B. de Mille.)

cussed scenes, and so forth, that we were doing. Then we started the production of plays and she was a leading woman in stock companies, by herself sometimes, and sometimes she supported me and sometimes I supported her, according to which one of us had the job.

Through that struggle we kept pretty independent dramatic thought, as is necessary in writing and criticizing writing, in order to pass ideas from one mind to another. In other words, plays are not written, but they are re-written, and you have to have some intelligent and constructive critic to write again. So you do in the making of motion [282] pictures. There is no greater fallacy than the "Yes Man". A yes man would be completely destructive to an executive in motion pictures. Mrs. de Mille, fortunately, was not a "yes man".

It touches this case, I think, that some years later I went on to New York to negotiate an adjustment at the request of Paramount on the payment of the royalties due in the "Ten Commandments". They felt they had paid sufficient, and Mr. Saunders, who was the Auditor of the Company, had touched the softest spot in my nature and had convinced me we had had enough money out of it, and I agreed to cut our percentage from the 25 per cent which we had been receiving up to that time, to 12½ per cent, subject, of course, to the approval of the Board of Directors of the de Mille Productions, and when I returned, which I did without any particular fear that the Board would endorse the deal that I had

(Testimony of Cecil B. de Mille.)

made, Mrs. de Mille and Miss Rosson reversed my decision completely and refused to ratify the deal. Mrs. Adams joined them, and I think it was Mr. Fisher and myself, or Mr. King and myself—I have forgotten who the other directors were, but we were out-voted. That was a matter involving a great deal of money.

Then, in the production of plays in New York, Mrs. de Mille was always present at the rehearsals.

In the "Return of Peter Grim", which I wrote for David Belasco, Mrs. de Mille was of the greatest assistance to me at all times. She was, I believe, a member of the Board of Directors of the de Mille Company functioning in New York, which was a playwriting agency, of which my mother was President, developing such writers as Mary Roberts Rinehart, Avery Hopwood and Charles Klein, and handling the product of my brother and myself. [283]

On the formation of the Lasky Company, I have already testified that Mrs. de Mille was prominently identified with that. Mrs. Blanche Lasky was Vice President of the first Lasky Feature Play Company.

Then, coming west, one of the most important features, perhaps, Mrs. de Mille contributed to the early days of motion pictures was that on one occasion she asked me what insurance I had on a negative. I found I could get none. Then, realizing how inflammable film is, we knew that one cigarette ash could destroy the entire structure, and at that time would have destroyed the corporation, as we only had

(Testimony of Cecil B. de Mille.)

\$20,000—she asked me why I did not shoot the scenes twice. That, I do not think, had ever occurred to anybody, that you might make two negatives, and after getting from the auditing department the additional cost it might be, and finding it was not excessive, and that as no insurance could be procured on film, I photographed all scenes twice; we shot every scene twice. At night I carried all of the film home on horseback and Mrs. de Mille stored it in the attic.

That little act saved what was one of the greatest producers in the world, because the first negative of the Squaw Man was destroyed, mysteriously, in the developing rooms. There was acid put in the developer, and in the dark printing room it looked as if the negative had been run under someone's heel, and this first negative of the Squaw Man was completely destroyed, and, to all intents and purposes, we were out of business. But, fortunately, we had that second negative, and Mrs. de Mille packed two large grips for me full of something that nobody knew what it was, and I was whisked down to a Santa Fe train, in which I had taken two adjoining compartments, and with this strange paraphernalia we started east, and I cut the second [284] negative of the Squaw Man, which nobody knew was in existence, somewhere between New York and Philadelphia, where we got off the train, and I was met by Mr. Lasky and Mr. Goldwyn there, so as not to take the negative into New York City, because we did not know where this mysterious hand was

(Testimony of Cecil B. de Mille.)

striking from, and we carried the cut negative to the Lubin factory in Philadelphia. Mr. Lubin was a great honest old German and he took pity on these three struggling young men who were in very serious trouble, and he printed that negative for us from this second negative, and we were in a position, having taken money from the State's rights buyers and the exhibitors, and if they had found our negative had been destroyed we would have been in a very unfortunate place, and I think the gratitude of all three of the incorporators of the First Lasky Company is very greatly felt toward Mrs. de Mille on her advice on the two negatives.

Then, Mrs. de Mille played in one or two of the earlier pictures when our financing was pretty short, and we had to conserve all of the talent we could get. I think she got \$3 a day, or some such munificent star salary. But she did good work.

Then, in taking part in all of the earlier conferences of the Lasky Corporation held out on the Coast, when trouble began to develop between the executives, Mrs. de Mille did a great deal to stabilize the peace of the internal machinery of that organization. So she knew the executive side of the motion picture industry very well. She had sat through the formation of what was undoubtedly the largest picture company in the world and watched it grow and took part in it. So, I do not know where I could have turned to find a better executive, more fully informed, to carry on the duties of Vice President in the formation of this picture company. [285]

(Testimony of Cecil B. de Mille.)

Q. Just what were her duties during the period of the existence of the corporation, or, let us say, from 1923 to 1929?

A. As to film, she passed on stories, with Mrs. Adams and myself. She passed on casting, with Mr. Goodstadt and myself; he was the casting director. She discussed various legal situations as they came up from time to time, with Mr. McCarthy, either alone or with myself. Then, as to the real estate end of the picture, which assumed very large proportions, she handled that practically alone.

She is a woman of considerable executive ability. I think I have already stated she was on the National Board of the Y. W. C. A., on the Board of the Red Cross, and on the Board of Directors of the Children's Hospital. She was also President of the Castalar Creche. During the war she had charge of the Department of Surgical Dressings of the Red Cross at Los Angeles, which is a very large department, shipping a great deal of material. She was also engaged in other activities which I do not recall at this time.

Q. Was she one of the earlier stockholders of the Jesse Lasky Company?

A. Yes. She was one of the very largest stockholders.

Q. Now, Mr. de Mille, did Mrs. de Mille participate at all in the negotiation of contracts as an executive?

A. Very materially. Every one of the big contracts that was negotiated, she sat in on the negotia-

(Testimony of Cecil B. de Mille.)

tions in New York with whomever we were negotiating with. She has a good cool New England mind, like Calvin Coolidge, which is very valuable when my own is not so reliable always as to its calm outlook upon attack. [286]

Q. I think you said Mrs. Adams was the head of your Reading Department?

A. The Reading and the Obtaining of New Material. For instance, the acquiring of the idea of the "Ten Commandments"—that resulted from Mrs. Adams conducting international contests for a new idea for a production, offering a prize of \$1,000 for the best idea contained in a one-page letter of so many words. There were, of course, thousands upon thousands of letters that came in in response to that. An enormous number of replies came in from all over the world, China, Peru, England, the United States, and everywhere. This contest was conducted either through the Times or the Examiner and was taken up by the Associated Press.

Mrs. Adams sorted all of these ideas, taking those which she believed possible and submitting them to Mrs. de Mille and myself. We combed those over and reduced them down to a very small number, and one of those was the "Ten Commandments". Then we found that there were, I think, seven other people who had suggested the same idea, and we thought it was so good that we gave each one of the seven a thousand dollars.

Then, in order to make an important point, as we leave Mrs. Adams for the moment, you take an idea

(Testimony of Cecil B. de Mille.)

such as the "Ten Commandments", a letter containing such an idea as that may be laid on an executive's desk, and I say, "I should like to photograph a picture of the Ten Commandments, which will cost \$1,000,000", and when you say that, your reception is not a happy one. The executive says, "How can you photograph it; what are you going to photograph; what are the Ten Commandments?" Then you have to sell that idea, trying to show what you expect to do; that you are not photographing a block of stone, but you are photographing the laws and [287] then you are going to translate that into modern terms and show how you should not break the law; that you do not break the law but that the law breaks you; that it is a great principle you are bringing into play; that it is not an avenging hand; that it is something you do yourself.

If you are a good salesman, the executive sees the idea and says, "We will spend the million", or, perhaps, he says no. But that is where unit production comes into play. As I have stated from the beginning of motion pictures, mass production will completely destroy the industry in time. I made that statement in 1931 or in 1930 and was challenged by all producers, but they are finding that the unit system is the only method of operation, and now independent producers, called associate producers, are being brought in to all of the great studios and operating separately, operating either as other corporations, such as the de Mille Corporation, or any of 10 or 20 corporations, and they have associate

(Testimony of Cecil B. de Mille.)

producers who come in under a salary or a percentage, or salary alone, and operate.

That is the modern method of making pictures and has proven a better plan than the old mass production, because no one alone can make 52 pictures, such as the executive of a big studio has to make. The producing individual of a big studio has to make 52 pictures, and no one can intelligently read 52 scenarios in a year; it is impossible; you cannot read and absorb one scenario a week, and we have the greatest difficulty in doing four pictures a year; for one unit to make those is a lot. That is why it is necessary to combine units so they can use up the labor forces that would be resting between pictures, which was our great difficulty in the operation of a studio by ourselves. [288]

Q. Now, Mr. de Mille——

A. Have I covered the point of Mrs. de Mille?

Q. I think so.

A. And Mrs. Adams?

Q. I think Mr. McCarthy said she was the step-mother of Mrs. de Mille. I will ask you to just briefly state what her background is with respect to ability?

A. Mrs. Adams was the second wife of Judge Adams, of Newark, New Jersey, who was Judge of the Essex County Circuit Court, Court of Appeals, and Court of Pardons of New Jersey. She was a very intelligent woman, splendidly educated, and a teacher. Her mind is a very valuable one, because she has as wide a knowledge of the drama and lit-

erature of the past as any individual I have ever met. So, she can immediately tell from what source an idea has come. When she receives a letter, or reads a scenario, she will instantly check it and say "That is Jean Val Jean"; or, she will say "This is novel to me"; or she will say it is from Homer's Iliad; or she may say "This is merely a modernization of the Odyssey", or, whatever the source may be from which it is derived, she instantly has that at hand.

Q. Do you have any more to say about that?

A. I can go on elaborating indefinitely, but I think I have covered the point sufficiently.

Q. As President of the Cecil B. de Mille Productions, Inc., did you employ Mrs. Adams because she was the stepmother of Mrs. de Mille, or did you employ her because she is highly talented?

A. Because she is extremely talented, and, as I moved the corporation [289] from one place to another, she was instantly taken by those other companies and operated with them, through Metro-Goldwyn-Mayer, Cinema, and Pathe. She procured all material for the Cinema and Pathe pictures for years; I should think probably three years, or whatever the period of time was during which probably sixty or seventy productions on which many millions were spent were made.

That answers your question, I think, even better than a "yes" or "no" answer would.

Q. Miss Rosson is the secretary of Cecil B. de Mille Productions, is she not?

A. Yes.

(Testimony of Cecil B. de Mille.)

Q. Did any person other than Mrs. de Mille visit theatres for the purpose of obtaining material for picture production?

A. Mrs. Adams, or Mrs. de Mille?

Q. Mrs. de Mille.

A. Yes, Mrs. Adams. She has kept in touch with all plays and novels of the year. I mentioned that in my former testimony.

Q. Did you have anybody searching also for star material?

A. Yes.

Q. Who did that?

A. That was done by practically everybody in the organization; they had instructions to keep their eyes open at all times. In pictures, the whole staff is compelled, whenever possible, to attend the nightly runnings at the office of—at the projection room, where we project all of the pictures from. That is done in the Cinema also and Famous Players does the same thing, and some of the staff will attend the Famous Players [290] runnings while the rest of the staff attend the de Mille Productions runnings, so we can be in touch with every single screen entity and know where there is good material and all of the places have to be covered and the people are found from every one of these places. One of the best known leading women of recent years, a woman named Alice Perry, I found walking past the cutting room, the film slicing room; I saw her sitting there. She became one of the best known stars in the world. She later married Rex Ingram, a director.

(Testimony of Cecil B. de Mille.)

We find talent in many places.

The executive staff of the de Mille Productions had its offices in two places. The de Mille offices wherever they might be, and in the offices of whatever studio we were producing pictures in, according to whether the staff was on the executive side or the labor side. The Productions Company had offices and maintained regular offices at Laughlin Park. That property was bought by the Corporation from me, and I think there were 9.4 acres originally. There was a small patch of about three-quarters of an acre which Mrs. de Mille bought. It was her development. It was rather wild land. The coyotes used to wake us up howling around the place and getting into the place where the children kept their rabbits and things of that sort. So, Mrs. de Mille bought the 9 acres, securing it from different persons, in order to develop the property as a real estate venture, and, I may say, made money from it.

We have a residence right next to the building used as the office of the Cecil B. de Mille Productions, Inc., and they are connected by a passageway. In the office is where we have our projection room as Mr. McCarthy described. The film booth is a concrete booth built outside [291] of the building, and the screen is inside. The main room of that building is used as a projecting room. Our company maintains its records there. It has also a very large library. When we severed our connection with Famous Players, we took with us the mass of research data that we had compiled, moving that to Cinema

(Testimony of Cecil B. de Mille.)

and Pathe, and we continued to compile research references, and when we severed our connections with Cinema and Pathe, we took with us our research library, to Metro-Goldwyn-Mayer. When we severed our connection there, we took our research library to Laughlin Park. It consists of nearly 10,000 volumes. There are very rare books on lighting, architecture, costuming, historical data on the theatre records of every play produced for the last two or three hundred years; all of the old English drama; translations of the old French drama; copies of parchment; copies of contents of the British Museum, the Louvre, a museum in Rome I have forgotten the name of, the Museum in Berlin, photographic copies of architecture throughout the world, stereoscope photographs of the life of the people in every country of the world, the interior of their houses, the exterior, streets, architecture, style, so that at any time when necessary in the operation of the making of a picture—if you are going to lay it in Greece, you have to know Greece. You cannot do it with just a surface knowledge; you have to know fully what the Greeks did and how they did, from the bath room to the palace; what they wear; even the underwear; what kind of harness they use in the chariot; whether it is pulled by a neck yoke or a trace; whether they carried two spears, or one, or whether they wore armor or carried a shield.

[292]

We have a very large collection of arms, spears and junk of that sort. We have fire-arms from their earliest creation; the old Chinese gun, from that,

(Testimony of Cecil B. de Mille.)

down to the modern rifle which was used by Germany, America and England in the last war. We have a collection of various types of whip used from the earliest known period of the exodus from Egypt down to the modern one used by our predecessors in Government in the Philippines.

We used spears in the "Ten Commandments", for instance. We do not keep all of those spears in our office. We do not always keep them in our office. Most of them are at the Los Angeles Museum, where they borrow them when we are not using them. We have not room in our office to keep all of those things, and the museum is constantly calling on us to show our stuff there and we are happy to do it. We make the spears from the original we have for use in the pictures.

We had original sketches or paintings of very great value in the production of motion pictures. Take the Groespeck sketch. We took him as the artist in doing the Volga Boatman, which was the first picture made at all favorable to the Russian idea. A man named Groespeck had been imprisoned in Russia for some time. We sent for him. He paints in Russian dyes. We had him make sketches of all the characters and of each scene as it would be required. He is a well known artist and is quite highly paid for his work. I should say that the fifty sketches of his on that picture—— We had a great many other sketches. It would take a long time to name them.

(Testimony of Cecil B. de Mille.)

Whereupon the following proceedings occurred:

Q. What is the relative importance of the executive staff that you describe here of the Cecil B. de Mille Productions, Inc., to the so-called producing staff? [293]

Mr. LEMING: Just a moment, please.

The witness has spent possibly three hours describing in general terms an executive staff. With the exception of the mentioning of Mrs. de Mille and Mrs. Adams, there has been no other reference to an executive staff, as I have followed the testimony.

The WITNESS: I did not know I was to name them, your Honor. I will be very happy to do so.

Mr. LEMING: The witness has been proceeding in general terms about an executive staff. He has described electricians and sound engineers and sundry other persons and the steps necessary to constitute an executive staff. He has not yet related that testimony to this taxpayer. So, this question it seems to me, is objectionable because we do not know precisely what executive staff this taxpayer had.

Mr. MACKAY: If your Honor please, I just want to correct some impressions Mr. Leming has. Yesterday and early this morning we had gone into the producing unit. This morning, just recently, as your Honor will recall, we have taken up the executive staff, those having their offices in various places, but closely connected with the executive branch of this taxpayer. You will recall that Mr. de Mille testified that it took maybe a year to get a picture ready for shooting, and 40 days to shoot it.

(Testimony of Cecil B. de Mille.)

Mr. LEMING: What picture?

Mr. MACKAY: I submit, if your Honor please, that is a perfectly proper question.

Mr. LEMING: If your Honor please, that testimony was all in general terms. I think it should be related to a specific taxpayer or to some specific situation. It is all generalities about the moving picture industry. We have a specific taxpayer. We have had a lot of irrelevant [294] testimony and we have had but little of a specific character in respect of the taxpayer whose case is pending here.

The MEMBER: There is some merit in what Mr. Leming says.

Mr. MACKAY: I appreciate that, if your Honor please.

The MEMBER: If it was necessary for the petitioner to have an executive staff and a producing staff, it seems to me if you show the petitioner did have such staffs, or was faced with the necessity of procuring them, perhaps Mr. Leming's objection will be met.

Mr. MACKAY: I will withdraw the question.

By Mr. MACKAY:

Q. Now, Mr. de Mille, you have spoken about certain individuals. Will you name those individuals who are connected with the executive part of the Cecil B. de Mille Productions, Inc., leaving out, right now, those executives who are connected with the actual shooting of pictures?

Mr. LEMING: Now, may I inquire if we are limited as to time; is the year of essence in your

(Testimony of Cecil B. de Mille.)

question? We have a number of years involved in this proceeding?

Q. During all of the years from 1923 to 1929, the years involved in this case?

A. The executive staff other than those in the physical production of the picture?

Q. Yes.

A. Almost all are related to the physical production of the picture.

The MEMBER: Perhaps the witness understands what you mean by that separation; I confess I do not. [295]

Mr. MACKAY: I shall withdraw the question temporarily.

By Mr. MACKAY:

Q. The evidence here, Mr. de Mille, shows, I think, that you had, that the corporation had a contract with Famous Players-Lasky dated November, 1923?

A. Yes, sir.

Q. Now, I will ask you to please state what was the executive staff of the productions company operating under that contract?

Mr. LEMING: May I see Exhibit No. 6?

The WITNESS: I will answer as nearly as my memory can be relied upon, for rather a long list. I was President of the corporation and director of the pictures.

Mrs. de Mille was Vice President of the Corporation, consulting on the pictures.

Mrs. Adams procured material.

(Testimony of Cecil B. de Mille.)

Mr. McCarthy, I believe was a director, and arranged the legal matters in connection with it.

Mr. Fisher was production manager.

Miss Rosson was assistant secretary, I believe, at that time.

Paul Iribe was art director.

Bert Glennon was camera man.

Mrs. Adams, the Playwright, procured the material.

Kiesling, I think, was publicity head——

By Mr. MACKAY:

Q. Not wishing to interrupt, I show you petitioners' Exhibit No. 6 and call your attention to page 15, Mr. de Mille, which enumerates, not the names, but the officers. [296]

A. I think this will help me to give the names. The head Assistant was Cullen Tate, and his assistants were too numerous to mention.

The camera man was Bert Glennon.

The Art Director, Paul Iribe.

Scenario Writer, Jeanie Macpherson.

Publicity man, Barrett Kiesling.

Set Electrician, Ewing, I believe; I am not certain of that.

The property man was Madigan.

The head grip, which I neglected to mention in my summary of the staff—I do not recall his name.

The Set Carpenter was George Dixon.

The Wardrobe Mistress, I believe, was Clare West.

Production Manager, John Fisher.

(Testimony of Cecil B. de Mille.)

Play Reader and Assistant, Adams.

Prop Maker—I am afraid the name has slipped me.

The cutter was Anne Bauchens.

The special packages man, Roy Pomeroy.

Q. The contract in evidence, not only that particular contract, but the other contracts also show that on the termination of those contracts that the staff you have enumerated, that those people who are not named but whose positions are named in those contracts, are to follow the Cecil B. de Mille Productions, Inc.?

A. Yes.

Mr. LEMING: Just a moment. The question is very general, as to all of the contracts. The question involved other contracts. I do not think [297] we can follow this very well without specific reference to specific contracts. I think the question is objectionable for that reason. It places the respondent at a disadvantage in trying to follow the purport of the testimony.

Mr. MACKAY: I shall name them, Mr. Leming.

Mr. LEMING: May this question be stricken?

Mr. MACKAY: It may.

By Mr. MACKAY:

Q. Mr. de Mille, I call your attention to the provisions of the contract of November, 1923 with the Famous Players-Lasky, and also the contract with Cinema Corporation of February, 1925, the contract with Pathe, dated, I believe, in April, 1927, and the Metro-Goldwyn-Mayer Contract in 1928; in all those contracts, Mr. de Mille, there are provisions which provide that upon the termination of the contract

(Testimony of Cecil B. de Mille.)

the staff organization to which you have just referred, the personnel of that, go to the Cecil B. de Mille Productions, Inc.; now, I will ask you if that staff that you have named has always been the staff of the Cecil B. de Mille Productions, Inc., and whether that personnel has come to you after you have terminated the contracts with these people that I have mentioned?

Mr. LEMING: Just a moment, please.

If your Honor please, that question is so involved I do not believe it is possible to follow it. It is objectionable for that reason. Mr. Mackay has stated several things the contracts were supposed to involve. I do not know and do not know whether any of the others know that is true or not. The contracts speak for themselves. Now, if there are particular provisions of those contracts which are being varied, or which [298] are being attempted to be varied by the witness' testimony, they should be singled out, but the contracts are in evidence and it seems to me that unless he is trying to vary some particular provision of them, the question is improper.

The MEMBER: I do not think it is so involved. It is very clear to me what he is getting at. You may be right as to the matter of assuming that certain of the contracts have such provisions, but I think it has been testified here it is the general practice to include in such contracts a provision that the staff accompany the petitioner upon the conclusion of the contract. Whether all of the exhibits

(Testimony of Cecil B. de Mille.)

show that, I do not know, as I have not examined them.

Mr. LEMING: I have been reading them diligently so far as I have been able in my working hours, and they are rather long contracts and a number of them are in evidence——

The MEMBER: I wonder if we cannot find the difficulty by asking the witness if the contracts contained such a provision and whether the staff did go with the petitioner company in accordance with the provisions of those contracts?

Mr. LEMING: Thank you. If your Honor please, I was going to say that if they followed the contracts, that would be in accordance with the question.

The MEMBER: That is what you are getting at?

Mr. LEMING: If you put it that way, I have no objection.

Mr. MACKAY: Of course, if your Honor please, I am not attempting to vary the terms of the written contract. I am stating a fact, what I know to be a fact, which is what the terms are. Then my question is [299] if, under the terms of the contract this personnel really belonged to them and if at the termination of the contracts the Cecil B. de Mille Productions, Inc., got what they actually intended to get.

The MEMBER: I understand Mr. Leming's objection is that while you may have knowledge of the contracts, you are speaking about something which Mr. Leming and I do not know, because we have not had an opportunity to examine the contracts.

Mr. MACKAY: I will limit it.

(Testimony of Cecil B. de Mille.)

The MEMBER: I am sure it is easy enough for you to get in this testimony in a way we can follow.

Mr. MACKAY: Yes, sir.

By Mr. MACKAY:

Q. Mr. de Mille, I call your attention to Petitioners' Exhibit 6, which is a contract dated November 16, 1923, by and between Famous Players-Lasky and Cecil B. de Mille Productions, Inc.

A. Yes.

Q. I will ask you to examine that contract and state whether or not there are provisions in there which specify that certain personnel—

The MEMBER: Tell him the number of the paragraph, if you know, in order to save time.

The WITNESS: I know it is there. I am perfectly familiar with the contract. It so states, and when I left the company I took such an organization with me.

By Mr. MACKAY:

Q. You mean Cecil B. de Mille Productions, Inc., took it?

A. Yes. [300]

Mr. LEMING: If I understand his Honor's suggestion, it is that he specify the paragraph.

The MEMBER: Let us have it. That will meet Mr. Leming's suggestion.

The WITNESS: This paragraph provides that in the event this contract it terminated—

Mr. LEMING: What paragraph, Mr. Witness, please, and the page?

The WITNESS: Page 15.

(Testimony of Cecil B. de Mille.)

The MEMBER: Of Exhibit 6; is that right?

Mr. MACKAY: Yes, sir.

The WITNESS: The first paragraph at the top of the page.

Mr. MACKAY: Will you read the paragraph?

The WITNESS: "In the event this contract is so terminated, the producer shall be entitled to, and there shall be transferred to it"——

Mr. LEMING: If your Honor please, there is no occasion, as I see it, to read this contract into the record. It has to be read in connection with the whole contract. To start out by saying that if the contract is so terminated—that means that something has gone on before——

The MEMBER: Let me see it. Indulge me a moment, gentlemen.

Mr. LEMING: What I want is an identification of what we are talking about here.

The MEMBER: It is clear enough that this provision states the petitioner is to take the contracts and rights to the services of all the members of the staff of the producer. That is what we are talking about.

Mr. MACKAY: Yes. [301]

The MEMBER: The question is whether or not this productions company upon the expiration of that contract did take over the staff; in other words, did it or did it not?

The WITNESS: Yes, sir.

By Mr. MACKAY:

Q. Mr. de Mille, are you familiar with the terms of the other contracts that follow?

(Testimony of Cecil B. de Mille.)

A. Yes, sir.

Q. And the same provisions are in all of the other contracts, are they not?

A. Yes, sir.

Mr. LEMING: The question is objectionable for the same reason. We have this one specified——

The MEMBER: I will sustain it. It is easy enough to be specific, Mr. Mackay.

Mr. MACKAY: Yes, sir.

By Mr. MACKAY:

Q. I will ask you, Mr. de Mille, if you continued, if the Cecil B. de Mille Productions, Inc., continued to keep that staff?

A. Yes.

Q. And during all of the time——

Mr. LEMING: If your Honor please——

By Mr. MACKAY:

Q. —that you were producing pictures?

Mr. LEMING: May I interpose——

Mr. MACKAY: Will you please wait until the question is asked?

Mr. LEMING: You proceeded before I could get a chance to comment upon this question and answer. [302]

The MEMBER: You are speaking of the question and answer just passed?

Mr. LEMING: Yes.

The MEMBER: What is it?

Mr. LEMING: I move to strike for the reason it does not indicate in what way the staff was continued, or how long. I think there is no assumption

(Testimony of Cecil B. de Mille.)

here it continued indefinitely. If it did, this witness could so specify as to years.

The MEMBER: He said it did. If, upon cross examination, you change that answer, you may do that.

Mr. LEMING: All right, your Honor.

The MEMBER: Go ahead, Mr. Mackay.

By Mr. MACKAY:

Q. Now, Mr. de Mille, the Cecil B. de Mille Productions, Inc., produced the "Ten Commandments", did it not?

A. Yes, sir.

Q. Do you know approximately how much it cost to produce that?

A. \$1,475,000.

Q. It also produced the "King of Kings"?

A. Yes, sir.

Q. And do you remember what that cost?

A. \$2,335,000. The producing of the "King of Kings" was under different circumstances than that of the "Ten Commandments". I presume I am correct, but I have to refer to the contract to see what the technical difference was. [303]

Q. Do you know approximately, for instance, what the "Ten Commandments" grossed—

Mr. LEMING: I object to that, if your Honor please. The record ought to show that. We are getting into rather general terms instead of specific facts, which, I assume, are susceptible of proof, and if so, we should have the definite and certain proof, so far as their records show, if their records do show.

Mr. MACKAY: I will withdraw it.

(Testimony of Cecil B. de Mille.)

By Mr. MACKAY:

Q. Mr. de Mille, how many pictures has the Cecil B. de Mille Productions, Inc., produced from the time of its organization until the end of 1929, or, to the present time?

A. At the end of 1932 I had produced 18 pictures.

Q. Approximately how much did they gross, if you know?

A. \$21,730,000.

Mr. LEMING: I move to strike the answer, if your Honor please, it is not the best evidence of that fact. If it is of importance at all, it is susceptible of the ordinary proof.

Mr. MACKAY: We did not want to be forced to get the Famous Players-Lasky records and show what it grossed. This man produced the pictures. He know more than the records know. He actually knows. If counsel can break it down on cross examination, that is his privilege.

The MEMBER: I do not understand the exact amount of the gross is material here. This witness has been asked about how much it grossed—I will let his answer stand.

Mr. LEMING: Exception.

The MEMBER: Note the exception. [304]

By Mr. MACKAY:

Q. Do you know approximately how much the Cecil B. de Mille Productions, Inc., received from that gross during that period on those pictures?

Mr. LEMING: Objected to.

(Testimony of Cecil B. de Mille.)

The MEMBER: That is the same objection, is it not?

Mr. LEMING: No, if your Honor please.

The MEMBER: All right.

Mr. LEMING: It has not been shown in the evidence here how the Productions Company was compensated.

The MEMBER: That is in the contract, is it not?

Mr. MACKAY: Yes, your Honor. I have taken a long time to prove it.

Mr. LEMING: Now, we are coming to one of the most crucial things in this case, if your Honor please, which is the income of this corporation. We are coming now to something which is important and relevant, which is, what was the income of this corporation and what were the sources of it. Now, if your Honor please, I submit that the records are necessary on that point and that we should have definite testimony and not approximations.

The MEMBER: Where are you going with this line of testimony, Mr. Mackay?

Mr. MACKAY: If your Honor please, I think in my opening statement I said that this taxpayer had paid a great deal of money because it lacked money to use in the producing of pictures. My only purpose in asking this is to show that over a period of ten years this taxpayer has produced 18 pictures, grossing approximately \$21,000,000 and this taxpayer got, I think, not more than \$3,000,000 out of it, or whatever the amount was, merely to show that this taxpayer could have made more money if it had

(Testimony of Cecil B. de Mille.)

had [305] its own money to operate on. In other words, this is tending to show that the company was under a handicap at all times because it was not using its own finances, which, I think, is a necessary part of the case.

Mr. LEMING: If your Honor please, I think that statement of counsel certainly illustrates the force of what I have tried to say.

The MEMBER: I think it does. I note in Exhibit 2 for the year 1929 under the heading "Royalties, picture", on Schedule 8-2, Pathe, \$200,000; I take it that, under the contract which this petitioner had with the Pathe Company, was a certain percentage of the gross earnings of the picture made for Pathe; is that right?

Mr. MACKAY: Which item?

The MEMBER: The item of \$200,282, Pathe, under "Royalties, picture", in the year 1929.

Mr. LEMING: May I inquire, if your Honor please, the page?

The MEMBER: In Schedule 8-2—I do not have any page.

Mr. MACKAY: It is the \$200,282 figure?

The MEMBER: The figure is not important. Do not try to find the page. What I am inquiring is this: Is it not possible to take this figure received from Pathe, and the Pathe contract, which is in evidence and which I am told brings a certain percentage of the gross earnings of the figure from Pathe to this petitioner, and compute exactly the gross earnings of the Pathe picture?

(Testimony of Cecil B. de Mille.)

Mr. MACKAY: I think it is all in here, if your Honor please, and the analysis will show that.

The MEMBER: Wait a minute. I can see it may not be in here. If you are asking now about the gross earnings of a picture turned over to [306] Pathe, for instance, those will not be contained on the books of the petitioner, but on the books of the Pathe Company, and of course, we come to the rule immediately that the books are the best and only evidence, perhaps.

Mr. MACKAY: Of course, we could do it this way: We could take the Pathe contract, where they were supposed to get 15 per cent of the first million——

The MEMBER: That is the purpose of my question. I did not propose to over-ride Mr. Leming here and let this petitioner testify as to what Pathe's earnings may have been unless we have some definite check here.

Mr. MACKAY: It is really not for the purpose of showing what Pathe did, but to give the Court some idea of the hazards and difficulties under which the corporation operated because it did not have money to operate on. The witness, having been a director and producer of pictures, knows of his own knowledge, perhaps better than the records of Pathe would show. We are not trying to prove dollars and cents. Any executive would be familiar with it. I dare say you could put an executive of the steel company on the stand and he could tell you off the bat how much the steel corporation spent last year

(Testimony of Cecil B. de Mille.)

in producing something. The President of the United States certainly could say it cost \$100,000,000 for the R. F. C., and he could testify to that without going to the books.

The MEMBER: We have had discussion enough, I guess. Read the question, Mr. Reporter.

(The question referred to was read aloud by the reporter as above recorded.) [307]

The MEMBER: That question referred to the picture "King of Kings"?

Mr. MACKAY: The "King of Kings" picture, your Honor.

The MEMBER: And all of the pictures made by Cecil B. de Mille Productions, Inc.?

Mr. MACKAY: All of the pictures made by de Mille Productions, Inc., yes, sir.

The MEMBER: During all these years under all of these contracts?

Mr. MACKAY: Yes, sir.

The MEMBER: I shall sustain the objection.

Mr. MACKAY: Note an exception.

The MEMBER: An exception may be noted.

By Mr. MACKAY:

Q. Now, Mr. de Mille—

The MEMBER: May I interrupt you a moment? Perhaps you will want to dig some stuff up here, and this is a good time to take a short recess.

(At this point a recess was taken after which proceedings were resumed as follows:)

By Mr. MACKAY:

Q. Mr. de Mille, yesterday you testified a little about the partnership. I will ask you now if at the

(Testimony of Cecil B. de Mille.)

time you organized that partnership either you or the other partners intended that it should be used as a means of escaping surtaxes?

A. No, sir.

Q. What have you to say with respect to the formation of the corporation; was it formed by you, or did you and the other incorporators at the time it was formed intend that it should be used as a means of aiding you to escape surtaxes? [308]

A. No, sir.

Q. That is, through the retention of your earnings?

A. No, sir.

Q. When did you conceive that idea of organizing that partnership, Mr. de Mille?

A. The form of the partnership I did not conceive at all; that was conceived by our attorney.

Mr. MACKAY: What was your purpose in organizing it?

The WITNESS: The form of the organization—I presume that is what you mean?

By Mr. MACKAY:

Q. Yes.

A. Some time back in 1917 or 1918, I do not remember just when, Mrs. de Mille and I first talked about it. We talked about it a good deal as we saw the disaster overtaking individuals in the Famous Players-Lasky Corporation and others, and the first definite date which I can recall—I cannot recall the day of the year—was when we sent for Mr. McCarthy and told him that we had decided that

(Testimony of Cecil B. de Mille.)

such an organization must be formed. Evidently, shortly after that, prior to its complete formation, I must have gone to Mr. Lasky, because I was Director General of the corporation—I must have gone to Mr. Lasky and told him of our intention and told him that those people that I had developed, that we were going to endeavor to form into a separate unit or corporation and that—

Q. And by those people you had developed, you refer to whom?

A. To the staff. [309]

Mr. LEMING: If your Honor please, I move to strike that question and answer for the reason, again, that the general testimony of this witness about a staff has not been in respect of a particular staff. If he has in mind any particular staff which he took over, then it should be stated specifically. The question and answer are both objectionable, lack definiteness and certainty, and I move they be stricken.

The MEMBER: He has named them by name and has said he took them over and kept them from then on. I shall overrule the objection and permit the answer to stand.

Mr. LEMING: Note the exception.

The MEMBER: Note the exception.

The WITNESS: If I may clarify that, that staff, of course, was subject to change and was changed in certain individuals from year to year. In the middle of the making of the "King of Kings", for instance, Mr. Iribe went out and Mr. Leisen came in, and

(Testimony of Cecil B. de Mille.)

there were changes of that kind from time to time. So, a better picture of the situation can be gotten by alluding to the position rather than to the names. By Mr. MACKAY:

Q. Has that staff always been known as the staff of the Cecil B. de Mille Productions, Inc.?

A. Yes.

Q. And has always been a separate unit when working in these other places?

A. Yes, sir.

Q. Mr. de Mille, I call your attention to Exhibit 2, which is—I am reading from Exhibit 2, Mr. de Mille, which is the balance sheet, or, rather, comparative balance sheets of Cecil B. de Mille Productions, [310] Inc., and—

Mr. LEMING: What page?

Mr. MACKAY: This is the first page. It shows a surplus at the end of 1924 of \$258,000. This record also shows that during the year 1924, \$4,000 dividends were paid.

By Mr. MACKAY:

Q. I will ask you, Mr. de Mille, why all of the earnings for that year were not declared out as dividends?

A. At the formation of this company, Mrs. de Mille and I had a very long and serious discussion as to the necessity for having our own company and building our own finances so that we would not be dependent upon outside sources, upon the banks. When banks came into pictures, trouble came in with them. When we operated on picture money,

(Testimony of Cecil B. de Mille.)

there was joy in the industry; when we operated on Wall Street money, there was grief in the industry. We desired to be independent and finance our own productions, our own company, in its entirety, so that we would be free to make the picture we wished, when we wished, and to have a company that was a complete separate entity and would be able to make its own pictures in its own way.

We realized that we would have to sacrifice a great deal of time; that it practically meant the elimination of home life. Mrs. de Mille will probably recall that conversation; that it meant 18 hours a day in the studio to build such an organization, to make the amount of money that we required, and we determined we would sacrifice everything to that end.

We discussed the amount of money at various times; what it took to finance pictures was changing from year to year and always increasing. [311] As I say, the first Squaw Man, we thought \$20,000 was sufficient, and it cost \$40,000; the "King of Kings" cost \$2,300,000. That shows you the manner in which costs were changing from year to year.

We realized it was necessary to have financing, not only for the single pictures we would make, but for other pictures in between those pictures we would make, which would be made by our organization in order to carry the personnel while I, as Director, was preparing the next picture that I, as a Director, would make for the corporation or partnership.

(Testimony of Cecil B. de Mille.)

To do that takes a very large amount of money, as pictures range in cost from two or three or four hundred thousand dollars for the lesser pictures, up to two million, two and a half million, and up to nearly five million, the cost of *Ben Hur*, or, four million. Somehow, the figure of \$4,000,000, came in as a minimum. That figure is not, in my opinion, in the light of what has happened, sufficient to have properly financed us. That point is very clearly shown in the Cinema contract, which calls for the financing company to deliver to us \$2,800,000 the first year and then increasing amounts for five years up to \$11,000,000 on the fifth year. That shows clearly the amount of money required to finance production.

Q. You considered \$258,000, that that surplus was wholly inadequate?

A. Completely inadequate.

Q. I will ask you if any part of that was retained during the year 1924, or shortly afterwards, for the purpose of preventing the imposition of surtaxes upon you?

A. Definitely not. [312]

Q. Or upon any of the stockholders?

A. No.

Q. And it was not discussed—was any discussion had at that time regarding the retention of those earnings with the intention of saving you taxes?

A. No.

Q. There was not?

A. No.

(Testimony of Cecil B. de Mille.)

Q. Or of saving any of the other stockholders taxes?

A. No.

Q. I will call your attention to the surplus at the end of 1925, which the record shows—I am reading from Exhibit 2—to be \$659,037.14; would your answer there with respect to the surplus at the end of 1925 be the same as it was with respect to the year 1924?

A. It would be the same, with a very important addition, however.

Q. Will you please state that addition?

A. That trouble had developed, serious trouble, between Famous Players-Lasky and ourselves at this stage. We had very nearly to put up \$476,000 excess on the "Ten Commandments" cost, and that had gone into a decided breach between the two organizations; the friction as to the type of picture to be made was increasing and it was evident that a break was imminent, and that every dollar we could conserve would have to be conserved as we might at any time be put in a position to stand on our own feet financially as well as artistically.

Q. The contract between Famous Players-Lasky and you was terminated early in 1925; so, what you have to say with respect to that applies to the year 1924? [313]

A. Yes. The difficulty started, I should say, in the middle of 1925, at least.

Q. The record——

A. But the contract was terminated, if I remember rightly, in January of 1926. So, 1925 is the year

(Testimony of Cecil B. de Mille.)

in the trouble accrued in. The termination was merely the outcome of six months of strife.

Q. At that time the record also shows that the acquisition of the Ince Studio that you had attempted to acquire the Ince Studio?

A. We did acquire it.

Q. Now, Mr. de Mille, referring to the surplus at the end of the year 1925 of \$659,000, I will ask you—first, let me say this: The record further shows that in 1925 there was a dividend paid of \$4,000, a total dividend?

A. Yes, sir.

Q. I will ask you if any of the dividends for 1925 were retained by this corporation in order to relieve you of paying surtaxes?

A. No, sir.

Q. Was any discussion had by you or any of the directors indicating an intention to retain the earnings of the corporation for that purpose?

A. No, sir.

Q. And I include in there—I will withdraw that. I will ask you if the earnings were retained for the purpose of relieving the other stockholders from the payment of surtaxes?

A. No, sir. [314]

Q. Now, at the end of 1926, Mr. de Mille, this exhibit shows a surplus of \$1,080,776.36 and dividends paid of \$40,000?

A. Yes, sir.

Q. I will ask you if any of the earnings for the year 1926 were retained by your corporation with

(Testimony of Cecil B. de Mille.)

the intention on the part of any of the directors or all of them, to relieve the stockholders of paying surtaxes?

A. No, sir.

Q. Was any discussion had at that time with respect to that matter?

A. No, sir.

Q. Or at any other time; did you have any discussion at any other time about retaining the earnings for the purpose of relieving you of surtaxes?

A. No, sir, not until the Government charged us with it.

Q. Now, Mr. de Mille, you have heard—I will withdraw that.

Further referring to Exhibit 2, it shows that the surplus at the end of the year 1927 was \$1,134,956.68 and that the corporation during that year had paid dividends in the sum of \$40,000?

A. Yes, sir.

Q. I will ask you if the corporation retained any of those earnings, any of the earnings for the year 1927, with the intention on the part of the directors or on the part of any one of them, for the purpose of relieving the stockholders, or any of the stockholders, of surtaxes?

A. No, sir.

Q. Was any discussion had at that time or at any other time with respect to the escapement of surtaxes?

A. No, sir. [315]

Q. I call your attention to the surplus existing at the end of the year 1928, which, from this record,

(Testimony of Cecil B. de Mille.)

shows \$1,380,487.01 and shows the payment of a cash dividend in the amount of \$56,000 and a stock dividend of \$400,000; I will ask you if the corporation retained those earnings for the year 1926 with the intention on the part of any of the directors to relieve the stockholders of the payment of surtaxes?

A. No, sir.

Q. Was any discussion had at that time, or at any other time, with respect to the retaining of the earnings for the escapement of taxes by the stockholders?

A. No, sir, not until, as I have stated, the Government charged us with it.

Q. Now, in 1929, the surplus shows \$1,333,743.51. I will ask you if the answer and the reasons why the earnings for that year were retained would be the same as for the other years?

A. Yes, sir.

Q. And I will ask you if there was any intention on the part of anyone to keep them for the purpose of relieving the stockholders of surtaxes?

A. No, sir.

Q. Now, Mr. de Mille, why did the corporation retain its earnings over these periods—I will withdraw that. Do you know of any other reason why the corporation retained its earnings than the ones that you have given? [316]

Q. Will you please state them to the Court?

A. On the termination of the Famous Players contract, which was terminated suddenly, though we were sure it was going to occur—there was a thirty

(Testimony of Cecil B. de Mille.)

or sixty day clause giving the right to terminate—when we were sure the termination was coming, the corporation decided to immediately start producing for itself separately and find another distributor. We had been looking for a studio to this end for some time. The necessity at this point was important, and I was called to New York. At a meeting before leaving Mr. Fisher was told—I think Mrs. de Mille and Mrs. Adams also—to investigate the Ince Studio with a view to buying it if it covered our needs. I believe I had one brief look at it before leaving for New York to negotiate another distribution contract and also financing, because we were not sufficiently—we had not sufficient money to continue our own product, or nearly so.

I felt if we could buy the studio and start the organization and take in enough independent companies to perhaps carry a good deal of the overhead, we could do that while we were producing our own pictures.

Mr. Fisher bought the Ince Studio, paying \$10,000 down at one time, and we had negotiations back and forth while I was in New York. Those figures went back and forth from \$700,000 to \$500,000. The first wire I had from him was a figure of seven, I believe, and I told him I thought that was out of line and asked him to estimate how much we would have to spend on the studio to put it in order. He wired me he thought that would be \$100,000 or thereabouts; that it was pretty old-fashioned and that a good deal would have to be done but it was a fine

(Testimony of Cecil B. de Mille.)

piece of property and worth a good deal of money, situated between Metro-Goldwyn-Mayer and the Paramount Studios.

I told him to close it at fifty if the board agreed. We bought it at fifty and we made the deal for distribution with the Producers Distributing Corporation, which was a distributing corporation formed from the Hodkinson Company, the W. W. Hodkinson Company, which in turn was owned by some banking interests. They had distribution and we had production. They made a deal with us, or we with them, to lift our producing organization out of de Mille Productions and into de Mille Pictures Corporation.

Q. But after you got that contract, Mr. de Mille, with the Cinema Corporation, why did you need to conserve your earnings?

A. We had one experience with a contract with Famous Players, and though this contract with Cinema was for five years, with a three year option—I am not certain whether it is the Famous Players or the Cinema or Pathe—I think the Cinema was made for five years with a three year option on their part of continuing.

Before I got back from New York, having made the deal, we found that the \$500,000, which was the first payment they were to pay into the new company for the making of the first two small pictures, was used half to clean up their own debts on the old Hodkinson Company.

Q. Did that affect—

(Testimony of Cecil B. de Mille.)

A. Very materially. I instantly saw that the name "de Mille Productions" had been brought in for the purpose of giving life to what was apparently a pretty sick institution, and giving it momentum to go on, and establish credit for it, and what not, and I instantly saw that there was probable danger ahead. [318]

All of that was within the first two weeks of the corporation, and productions on several occasions, had to guarantee the payment of the salary checks at the bank, as I recall it. So, it would have been folly at such a time to have said, "Let us declare a dividend". We did not know whether it would last two months or not.

Q. Did that uncertainty continue to the end of 1925?

A. It was continued through the entire association.

Q. And that lasted until April, 1927, when you made a deal with Pathe?

A. It continued through the deal with Pathe until the end came, which was the collapse of the Pathe contract.

Q. Did anything happen in 1927 or thereabouts with respect to the producing of pictures?

A. Something very serious happened in 1927.

Q. In what way that affected—

A. The Warner Brothers had developed sound to a point where I think, at the end of 1926, if I remember rightly, or some time in 1927—I am not certain of the date, but in 1927, I think, they re-

(Testimony of Cecil B. de Mille.)

leased a picture with Al Jolson, called some kind of a singer, in which he sang some of his songs. It was a tremendous success. The picture was not a particularly good picture, but it grossed in excess, I believe,—it is an estimate and I have no knowledge of it—of \$3,000,000. For a picture as little as that to be able to gross what these productions of mine had been grossing and to exceed some of them, showed very clearly that the industry was in for a complete revolution; that everything was changed or would be changed if this new thing developed, the new sound pictures. We did not know definitely at that time whether it would [319] develop; whether it was just a passing phase of the industry that would blow over like a number of other innovations; we did not know whether it was of that nature or whether it would take the public and interest them.

Q. What effect did that have upon the equipment in your studio?

A. If I may say this, incidentally, if that picture was successful, as it was, if the public took to sound, every piece of equipment in every studio was really junked overnight. There was no value left to anything, cameras, actors, directors, nothing counted but money to start a new organization with, and you did not know whether you had an organization or not, because the camera men were different, your actors were different, and in sound it takes a voice and some of your best stars in the silent pictures could not read the lines; they had no voice. The

(Testimony of Cecil B. de Mille.)

little stars came up overnight. The stage suddenly came to Hollywood and wiped out all of the old values completely. It was a new deal as far as pictures were concerned.

Q. About when did that happen, Mr. de Mille?

A. 1927 and 1928. The studios were junked. If I may refresh my memory, I have the date of those things in my pocket. Is there any objection?

Q. If counsel has no objection, you may refresh your memory as to the dates.

A. I think that will be a little more accurate.

Mr. MACKAY: Do you have any objection, Mr. Leming?

Mr. LEMING: You mean as to when sound came in?

Mr. MACKAY: Yes.

Mr. LEMING: The date the first sound picture was exhibited? [320]

The WITNESS: I have it right here.

By Mr. MACKAY:

Q. You have it?

A. Yes.

Q. When was it?

A. It was in 1928 that sound became such a vital factor. All equipment was junked overnight and a completely new technique had to be developed. Everybody had to start from scratch. The studios that had cost so much money, and all of their equipment were useless; new stages had to be built.

Q. Did you have any idea as to what it would cost at that time to construct a studio to take care of the new sound development?

(Testimony of Cecil B. de Mille.)

A. Anyone could see on every side what it cost.

Mr. LEMING: At what time?

Mr. MACKAY: 1927 and 1928.

By Mr. MACKAY:

Q. What, in your opinion—what was your idea at that time?

A. The last picture I had completed for Pathe that was directed by me, called the "Godless Girl" was in serious distress because it came in at the end of silent or the advent of sound. It was a silent picture, and after the termination of my agreement with Pathe and the agreement of de Mille Productions with Pathe, they asked that they be allowed to put a sound end on, because nothing could sell that did not have sound. That was a picture with nearly \$700,000 invested in it that was made valueless overnight—

Mr. LEMING: If your Honor please, I move that that be stricken. If it is material at all it is a matter which is susceptible of proof. In other words, it may be that someone has taken a loss in their income tax [321] return on account of that \$700,000; if so, that is a material factor. I do not know anything about it, but the witness is not offering competent proof here. His testimony is not competent to prove such a fact. I move it be stricken.

Mr. MACKAY: If your Honor please—

The MEMBER: I shall overrule the objection. It is merely corroborative of the general testimony of the effect the development of sound pictures had on the industry. Certainly he should know about it if anyone does.

(Testimony of Cecil B. de Mille.)

Mr. LEMING: I ask an exception.

The MEMBER: Note the exception.

By Mr. MACKAY:

Q. Mr. de Mille—

The WITNESS: I do not think I completed my answer.

Mr. MACKAY: Will you please read where he left off?

(The portion of the record referred to was read aloud by the reporter as above recorded.)

The WITNESS: —so that they had to put some sound in every picture.

Mr. LEMING: If your Honor please, may I for the record extend my objection further? It went to the loss which was taken. The answer mentions the investment in the picture and for that reason I ask the answer be stricken because there is no competent proof of the investment in the picture or its cost. I submit those matters are not material and are highly prejudicial. I cannot conceive of their going into the record for any competent purpose except through competent proof.

The MEMBER: The exact cost of the picture mentioned is not in issue here. I shall overrule the objection and allow an exception. [322]

Mr. LEMING: Note an exception.

The MEMBER: The reporter has noted it. Go along and finish your answer, Mr. de Mille.

The WITNESS: So, they put a little sequence of a few feet in sound, in very crude sound on the end of this picture, which was made not by me or

(Testimony of Cecil B. de Mille.)

de Mille Productions, but by another director, with sound, the de Mille Productions consenting to that, for I found I knew nothing about it and that nobody else knew very much. Sound engineers took complete control of the industry. The contract with Pathe was terminated.

We found ourselves on the termination of the agreement with a staff that could make marvelous silent pictures but that knew nothing of sound pictures; with \$100,000 of equipment that de Mille Productions took under the closing of the Pathe contract with them that was valueless, and general chaos reigned.

It seemed to me to be a very poor time to take what surplus we had and hand it out to ourselves to spend, because every dollar we had was more than needed, because we did not know whether there would ever be any more silent pictures or not; nobody knew whether the manufacturers of the sound equipment could control franchises and license producers. So, I have attempted to give you a picture of the chaos the business was in.

Then Mr. McCarthy negotiated with United and Metro-Goldwyn-Mayer for a new distribution contract, and at a meeting with Mr. Mayer and myself, Mr. Mayer representing Metro-Goldwyn-Mayer, we were strong enough on our name, the de Mille Productions meant enough to a distribution organization to get its product, and we were able to make them include in the deal the purchase of all this obsolete material, obsolete equipment [323] that we

had, which they purchased as part of the distributing deal for the de Mille Pictures.

Q. Do you know for how much?

A. I think approximately \$80,000, as I recall.

Q. During that time did you have any connection with the banks or any other institutions?

A. Yes, sir. I was Vice President of the Commercial National Bank, which was bought, or merged with the Bank of Italy, which was later changed to Bank of America.

Q. What was your position with that company?

A. I was Vice President, and am Vice President of the Bank of America. I was Chairman of its Motion Picture Loan Committee. We made the loans—I think we were the first bank in the West to make loans to motion picture companies against negatives.

Q. So at that time you knew not only the business conditions of your present company, but the general conditions affecting every one throughout the industry?

A. I was President of the Producers Association at that time for three years.

Q. What is that, Mr. de Mille.

A. The Producers Association is the Western Corporation of the Hays Organization. It is an association composed of all the major producers of the motion picture industry.

Q. Mr. de Mille, are any directors permitted to belong to that organization?

A. No, sir. [324]

(Testimony of Cecil B. de Mille.)

Q. Only producers?

A. Only producers.

Q. Mr. de Mille, did your company purchase any stocks, picture stocks, during this time?

A. I must go back to the Cinema deal. The first weakness, when Cinema got its financing fairly well started out, the gross returns on the pictures were not adequate to take care of the production costs, and we saw it was going to be a losing venture. I urged the Cinema Corporation to make theatre alignments, and Mr. McCarthy was either in New York or went on to New York to negotiate the financial handling of that transaction, and as these were arranged they were passed to de Mille Productions to take care of the business of the purchasing of the theatres.

Q. Was there any obligation on the part of de Mille Productions to purchase theatre stocks?

A. Yes, sir—you asked did they purchase stock in theatres?

Q. Yes.

A. Yes.

Q. Can you give an instance, or have you any evidence where they purchased stocks?

A. The Golden State Chain, which was through California—I am afraid the books can tell that better than I can, but there was also a chain of theatres through the Middle West, the name of which has slipped my mind, but there were about four or five theatre chains that we went into. Then, after

(Testimony of Cecil B. de Mille.)

the Metro-Goldwyn-Mayer Association, they asked us to purchase, at the time of the purchase by Fox, they asked us to purchase a large block of the Fox Theatre stock, and we purchased \$185,000 worth of that stock. [325]

Q. What were those stocks purchased for; what was your purpose in purchasing them?

A. The purpose of the purchase of the stocks with Cinema was for the purpose of building up a theatre chain in which to exhibit our pictures, because we realized that the other companies, who were fast getting control of all of the theatres in the country, could shut out our product, and it was necessary for us to have some part of the country more or less monopolized so we could trade with the other big companies which already had parts of the country monopolized. But, with the Fox purchase it was different. That was an expression on the part of Productions, at the request of Mr. Mayer, to show its good-will by supporting the policy of Metro-Goldwyn-Mayer and Fox in the purchase of the Fox Theatres.

Q. Mr. de Mille, I think you have stated that the corporation was organized and that you had an intention of building it up so you could produce your own pictures?

A. Yes, sir, produce and finance our own pictures.

Q. Produce and finance your own pictures?

A. Yes.

(Testimony of Cecil B. de Mille.)

Q. Now, in building up this company out of earnings, did you believe you were violating any laws of the United States?

A. No, sir, I did not believe it and I do not now believe it.

Q. Mr. de Mille, I will ask you if the corporation, the Cecil B. de Mille Productions, Inc., acquired any real estate for the purpose of using it in the production of pictures?

A. Yes, sir. [326]

Q. Will you please state to the Court just what real estate you acquired?

A. There were certain ranches in the San Fernando Valley, up a little canyon, that were bought and put together with what we call the studio lot, or the studio ranch, where big sets are built that are too big for a studio, and we also acquired the Ince Studio. We acquired property on Vine Street, adjoining the Lasky Studio, for the purpose of erecting a theatre, but that theatre was not erected. The foundations were covered and a restaurant known as "The Brown Derby" was erected there, which is a gathering place for the people of the industry. We also purchased the Tempest Theatre in Los Angeles, and there are several other minor ones.

Q. What is the importance of having a ranch?

A. I think I explained that——

Q. You did.

(Testimony of Cecil B. de Mille.)

A. It is where you have a large set, which is too big, such as a great many horses. Every studio has a ranch.

Q. I will ask you, Mr. de Mille, how the value of the real estate that the corporation owned on December 31, 1931, how that value compared at that date with the value of the same real estate, say, in 1922 and 1923?

A. Well, I would say it was between 50 and 60 per cent less value in 1931 than through the early 20's. The collapse had come along in the meantime and the bottom had dropped out of the real estate market. If you take 40 per cent of the value, I think I am safe in saying that very little real estate could have been sold at 40 per cent; you could not sell it at any price; the banks were closed. [327]

Q. What have you to say with regard to the stocks and bonds that you had at the end of 1931?

A. Very briefly, we suffered the way the rest of the world suffered. We had some Norfolk & Western stock which we had bought at 252 a share, and I think it went down to 109, and other stocks and bonds that we held similarly—we held a good many bonds, almost a quarter of a million dollars, or over a quarter of a million par value of Irrigation District bonds that we took at the collapse of the construction company that we had been financing and we were unable to sell those bonds at any price at all. They are now endeavoring to refinance the district. The same applies to all stocks and bonds that

(Testimony of Cecil B. de Mille.)

we held, except, of course, the Government Liberty Bonds and that sort of thing. [328]

Upon cross-examination the witness continuing testified as follows:

My Mr. LEMING:

Q. Mr. de Mille, laying aside all questions of purpose, will you state exactly what business this taxpayer was engaged in in 1924?

A. I will have to make that plural, what businesses.

Q. All right.

A. Do you wish me to enumerate them all?

Q. Yes.

A. I will, as near as I can recollect. The production of motion pictures came first. The operation of real estate, buying and selling real estate and subdividing; the financing operation of an oil company in Oklahoma.

I am not sure whether the aviation company had had its final tail spin by that time or not—you are asking about 1924?

Q. Yes.

A. I think probably the secretary of the company can give you the rest. That is what I recall at present. There are probably some other activities, the financing of different organizations.

Q. Now, is there any change in this business in the year 1925, or did it follow the same business which you enumerated for 1924?

(Testimony of Cecil B. de Mille.)

A. It was in a number of different ones—you are asking about 1925?

Q. Yes.

A. I think the records would have to show when we went into each different field. There are a great many, motion picture theatres, color, stereoscopic camera—there are a great many. I cannot give you all of the details but it is a matter of record fact on our books. [329]

Q. In 1925 did it continue its business in real estate?

A. Yes, sir.

Q. And did it have any business in the purchasing and selling of stocks and bonds?

A. Yes, sir.

Q. In the year 1926 was there any changes made in any of the business you have already indicated?

A. Plus whatever others the books may show and minus whatever others the books may show had become extinct in the meantime.

Q. Is that true for 1926, 1927 and 1928?

A. Yes, sir.

Q. And 1929?

A. Yes, sir.

Q. Can you state, Mr. de Mille—

A. I can add one. When you come down to the latter years, we were very extensively interested in cotton growing in Arizona. We put large sums, for a small corporation such as ours, into that at the time, into development of land for the growing of

(Testimony of Cecil B. de Mille.)

cotton, and particularly the California air Construction Company and several associated companies which were operated by the Secretary of the company and very large amounts of money were put in. Very large contracts were taken by these corporations for the building of a dam in an irrigation district and making roads through both California and Arizona——

Q. In what years was that?

A. I think I can give it to you fairly accurately. That started in 1925——

Q. You mean the development of the cotton land in Arizona? [330]

A. Yes, 1925 and 1926, the development of the cotton land and the construction company. That date is to the best of my recollection.

Q. Did the taxpayer own the land which it was developing down there?

A. The company that it was operating owned the lands. I have forgotten the name of the stock company now. They owned the major part of the—I do not recall whether they owned control or not. The name of the company has slipped my mind. I will recall it in a moment, however.

Q. Are there any other businesses that you now recall that you have not mentioned for any of the years?

A. Unquestionably there are. They are all shown by the operations of the company on its books. I am not terribly familiar with the details of that because

(Testimony of Cecil B. de Mille.)

I do not pay a great deal of attention to the running of it. It was run by the secretary of the organization.

Q. Now, in the production of a motion picture, the activities——

A. If I may recall another very large venture, it was the participation in the digging of some oil wells in Venice, in which we put from time to time something over \$200,000.

Q. When did that begin?

A. I am afraid of these dates. I am not very accurate on them. It was in either 1929 or 1930, I think.

Q. Did that involve having wells drilled?

A. Yes, sir. We did not drill the wells ourselves but we invested considerable money in drilling the wells.

Q. How about the land; did that belong to the taxpayer?

A. No.

Q. Was it under lease to the taxpayer? [331]

A. No, it belonged to a separate company.

Q. It belonged to a separate company?

A. Yes, sir.

Q. And was that separate company owned by the taxpayer?

A. No, sir.

Q. In what manner—what was your relation to the income of it?

(Testimony of Cecil B. de Mille.)

A. We advanced \$100,000 at a time toward the drilling of the wells, taking an interest in the wells.

Q. In proportion to your investment?

A. Yes, I presume so. I do not even recall what the interest was.

Q. Do you recall any other special enterprises in which the taxpayer engaged?

A. Not at the moment.

Q. There is in evidence as Petitioner's Exhibit No. 7, a contract between the original partnership and Lasky Famous Players Company. You recall that, I assume, what that contract is?

A. Yes, sir.

Q. Now, was that contract transferred by the partnership to the corporation?

A. Yes, sir.

Q. There was also a contract between yourself and the partnership?

A. Yes, sir.

Q. And as I understand that, that was also transferred to the corporation; is that correct?

A. As I recall it. I am not sure whether the technical terms are correct, but the corporation took over those two contracts of the partnership, as I recall it.

Q. The last one I referred to is Petitioners' Exhibit 14. Are you sufficiently sure about it without having to refresh your recollection? [332]

A. Yes.

(Testimony of Cecil B. de Mille.)

Q. So as I understand your answer is both of them were transferred by the partnership to the corporation as part of the assets?

A. I do not know whether that is the correct term or not, but the answer would be yes.

Q. And for that and the other assets of the partnership, the members of the partnership received stock of the corporation, did they not?

A. Yes.

Q. Now, there was also a third contract between you and the Famous Players-Lasky Company dated at the same time as the two I have just mentioned?

A. Yes, sir.

Q. What was the status of that contract at the time of the transfer of the partnership assets to the corporation; that contract is in evidence as Respondent's Exhibit F?

A. That is the same as the endorsements of a note. It is an agreement to see, that is, to the best of my ability, that the partnership performs its part of the agreement. It is customary in motion picture contracts.

Q. That is Respondent's Exhibit F. I just want to be sure of the identity of it for the record. Is that (indicating) the contract you have reference to?

A. Yes, sir.

Q. Now, did that contract continue in force after the assets were transferred to the corporation?

A. I would have to acquaint myself with the terms of it. I do not remember when its termination

(Testimony of Cecil B. de Mille.)

was. The contract itself will recite that. I do that know whether——

Q. As I understand you, this contract, Exhibit F, is a personal guarantee [333] on your part of the performance originally by the partnership of its contract with Famous Players-Lasky, which is your Exhibit No. 7?

A. Yes.

Q. Now, then, the contract known as Exhibit No. 7, you have testified, was transferred to the corporation?

A. Yes, sir.

Q. Now, the question I ask, then, is, did this guarantee on your part continue in effect after the other contract was transferred to the corporation?

A. I do not believe, Mr. Leming, I know when the date of the expiration of the contract was. It must state it on it.

Whereupon the following occurred:

Mr. LEMING: Counsel has kindly agreed to stipulate that the contract, Exhibit F, did continue, in effect——

Mr. MACKAY: I am sure it went over when the other contract went to the corporation. This is a guarantee and it continues as long as the other contract remains in existence, as I understand.

The WITNESS: I do not see a provision for termination, so the legal minds will have to determine that.

(Testimony of Cecil B. de Mille.)

Mr. LEMING: If the stipulation is satisfactory, that is all I wish to bring out.

Continuing the witness testified:

By Mr. LEMING:

Q. Now, you testified, I believe, Mr. de Mille, that you went to Mr. Lasky and told him that you were getting ready to, or you were about to sever your relations with Famous Players-Lasky, and you informed him that you were going to take with you the staff which you had built up, am I correct in that statement? [334]

A. No, sir.

Q. Will you state just how you said it, then?

A. I stated that I must have gone—in speaking of the meeting with Mrs. de Mille and Mr. McCarthy—that I must have gone to Mr. Lasky shortly after that and told him of our intention to do this, as I was going to talk to people who were in their employ and I was director general of the company and I did not think I should talk to them until I had talked to him and explain what my position was at the time. This was not at about the time of the formation; it was considerably before it.

Q. Well, did you take part of Lasky Famous Players staff with you when you formed your partnership?

A. No, sir, I took the de Mille staff with me.

Q. Of whom did that consist?

A. That staff was formed, not from Famous Players-Lasky Corporation employees in entirety

(Testimony of Cecil B. de Mille.)

at all; I procured my own people from various sources, not all from Famous Players-Lasky staff. I said I was going to talk to Mr. Lasky about the taking of certain people, but I also drew a number from other studios. When we formed it we put together the best staff we could in the formation of it.

Q. In the matter of a staff, just what staff did you have on the partnership; can you give me the names of the staff?

A. I have enumerated them, I think. I cannot give you the names from year to year for the whole 11 years; there are an awful lot of people there.

Q. I am asking now about the partnership. That was organized in 1920, was it not?

A. Yes, the staff in 1920, the names of the staff in 1920 as near as I can remember? [335]

Q. Yes.

A. President, Cecil de Mille; Vice President, Mrs. de Mille; Neil McCarthy was Secretary; Gladys Rosson, Ella King Adams, Frank Urson was Assistant Director.

Mr. LEMING: How do you spell that?

The WITNESS: U-r-s-o-n. He directed pictures for the organization between the big pictures, the big features which we made ourselves; Claire West, Wardrobe Mistress; Howard Higgins, Art Director; Cullen Tate, Property Man.

By Mr. LEMING:

Q. Tate?

A. Tate. I am not certain of the Tate, because he started in as a property man for the de Mille

(Testimony of Cecil B. de Mille.)

Pictures and went right up to Assistant Director through a period of years. Which year he became Assistant Director is pretty hard for me to say.

Barrett Kiesling, Publicity; Alvin Wyckoff, Camera man; Howard Ewing, Chief Electrician.

There was a man working a special color research that was used. I cannot remember his name. He was a German.

There are a number of others but I cannot recall them at the moment.

Did I name Jeanie Macpherson, scenario writer? There was also a woman named Hattie, who was the hair dresser, a very fine one. George Dixon, Chief Carpenter. There were others but I think that will have to do for the time being. That also is a matter of record.

Q. It is not a matter of record in evidence here, is it, Mr. de Mille?

A. I mean they can easily—those names can easily be produced. I can step down and get them in a second if you would like to have the rest. I am sure Mr. Fisher and Miss Rosson can hand them to me.

Q. If you wish to refresh your recollection, I have no objection, of course, to that. [336]

A. U. S. Poe, Head of Transportation; Paul Iribe, Director; Mitchell Leisen, Head of Costumes; Lawrence Taylor, the making of titles in the silent pictures.

Nils Henschleigl, Special Color Laboratory.

(Testimony of Cecil B. de Mille.)

Wilfred Buckland, in the Art Department; Hattie Tabourne, the hair dresser, and the cutter was Anne Bauchens, who has been with me for 27 years.

Q. Now, do I understand that is the staff with which you began as a partnership?

A. Yes, sir.

Q. And is that the same staff you had in 1921?

A. Mr. Leming, there is some change almost in every year. When which one was changed and to which position and when one left and another took his place, I cannot testify. We can prepare that if it will be of interest to you.

Q. Did you in 1921 have an individual occupying each one of the capacities you have mentioned there?

A. Yes.

Q. I show you Respondent's Exhibit E, one part of which is the partnership income return for 1921 and I will ask you to examine it and see if you can identify on that return any payment of money to any of the staff you have described?

A. Mr. Leming—

Q. I beg your pardon, Mr. de Mille, but if you do not mind, just answer the question as given to you.

Mr. MACKAY: I submit he is trying to answer the question, if your Honor please.

Mr. LEMING: May I have the witness just a little while? I am not going to be unfair or to try to confuse him. I have asked him a very simple question. [337]

(Testimony of Cecil B. de Mille.)

By Mr. LEMING:

Q. Can you identify from the return a payment to any of the staff you have mentioned in the year 1921?

A. These have always been a mystery to me and I have never been able to answer or understand anything about them. Mr. McCarthy or Mr. Fisher or one of the financial experts can do so, but to me they are a mystery.

Q. Mr. de Mille, there is not much mystery when a name is specified and an amount is placed opposite the name, is there?

A. Mr. McCarthy testified on that and I am willing to make my answer whatever his was.

Q. I again repeat the question, can you, from that document in your hand, identify a single payment made to any of the staff you have described in the year 1921?

A. Nor, sir. Even if they were there I would not be able.

Q. You cannot?

A. No.

Q. Can you from the return from 1920, also a part of Respondent's Exhibit E——

A. The same answer applies?

Q. The same answer to both years?

A. Yes.

Q. Who paid the staff in 1920 and 1921?

A. Cecil B. de Mille Productions, I should say.

(Testimony of Cecil B. de Mille.)

Q. Who?

A. Cecil B. De Mille Productions.

Q. Can you refresh your recollection from any record about that?

A. I do not think I need to, sir. [338]

Q. Would you say these income tax returns which have been introduced in evidence as Respondent's Exhibit E correctly reflect the operations of that partnership in the years 1920 and 1921?

A. I am sure they do.

Q. Thank you. I hand you, Mr. de Mille, the income tax returns of the taxpayer for the years 1923 to 1929, inclusive, and I will ask you to identify them and state whether or not they are the income tax returns of the taxpayer for the years I have mentioned?

A. They are.

Q. I am sorry, but I did not get the answer to the last question.

(Answer read by the Reporter).

By Mr. LEMING:

Q. Mr. de Mille, will you examine those returns and state whether or not they show the payment by the taxpayer in any of those years to any of the staff—

Mr. MACKAY: I do not want to interfere with the cross examination at all, but I imagine the returns themselves show what was paid there.

The MEMBER: Possibly they do. He is asked to

(Testimony of Cecil B. de Mille.)

state whether or not they do, or, at least, whether or not he can find whether they do.

The WITNESS: Your Honor, I wish some more capable mind could be substituted to answer that question than mine.

Mr. MACKAY: Do you want the witness to go through each one of those and state that?

Mr. LEMING: Well, I have a question pending. I do not know how else to proceed.

The MEMBER: If the witness is unable to find it, he can say so, of course. [339]

The WITNESS: I do not know the detail—how much of the detail—

The MEMBER: It is no reflection on the intelligence of the witness if he cannot find a specific item on an income tax form.

Mr. LEMING: I have always been able to identify names and amounts, at least.

The WITNESS: It is a question whether it would show that charge in detail. Would the United States Steel Corporation show payments to all of the puddlers on an income tax return?

By Mr. LEMING:

Q. Mr. de Mille, as a matter of fact, the taxpayer did not pay the staff, did it; is that not the truth?

A. I think I have testified on that point.

Q. Is it true the taxpayer did not pay the staff?

A. I would say they did.

Q. How?

(Testimony of Cecil B. de Mille.)

A. They received money weekly from Famous Players and they were paid through the machinery of the Famous Players Office.

Q. They were paid directly by Lasky Famous Players?

A. You mean who handed them the check?

Q. You did not hand them the check?

A. No.

Q. And when I say you, I am speaking about the taxpayer.

A. We did not hand them a check.

Q. They were paid by the check of the Lasky Famous Players, were they not?

A. We employed them and they worked for us and they were paid by check of Lasky. We paid Lasky in one check and they distributed a lot of checks, [340] because we did not wish to carry a full accounting department in order to pay 14 or 15 employees a week.

Q. You say you paid Lasky; what do you mean by that?

A. We gave them a check weekly for the expenses that the production had incurred and they were under contract to advance us the money for the production.

Q. Mr. Fisher testified that weekly cost sheets came to his desk and he checked and O. K.'d them and thereupon a draft was drawn upon New York?

A. Yes.

(Testimony of Cecil B. de Mille.)

Q. Is that the procedure which was followed?

A. Correct.

Q. Then why do you say you paid a check to Famous Players-Lasky?

A. We did. We drew the draft and handed Famous Players our check every week for the amount of the expenditures of the preceding week, or two weeks intervening, I do not remember the machinery, whether it was a weekly in all instances or whether sometimes they were accumulated——

Q. Checking on the money they sent you?

A. Which they were advancing.

Q. In other words, they advanced you this sum of money and you gave them a check back out of which to pay, out of the same fund, these salaries and expenses?

A. I think you can put it simpler by saying that out of the money for the production, and we gave them a check as they expended it for us.

Q. As they expended it for you?

A. Yes.

Q. So your check did not mean any outlay of money except that which was being advanced every week by Lasky Famous Players?

A. There was a great deal of money expended aside from that. Take one [341] salary alone, the director's salary, which was \$2500 a week——

Q. Whose salary was that?

A. Mine.

Q. Yours?

A. Yes.

(Testimony of Cecil B. de Mille.)

Q. Who paid your salary?

A. Productions, the same as the others.

Q. Was that paid to you under the contract of employment which you entered into with the partnership and which was in turn transferred to the corporation?

A. Yes, sir.

Q. Where did Productions get the money with which to pay the \$2500 a week to you?

A. From the advance from New York and an additional advance—I have forgotten the amount, but I think it was \$6500 a week, advanced to take care of the executive salaries and other expenses.

Q. That is advanced by the distributors who were putting up the money to pay for the picture?

A. Yes, sir, advanced against 30 per cent of the profits of the picture.

Q. Did they also advance the money with which Mrs. de Mille's salary was paid?

A. Yes, sir.

Q. Did they advance any money for the use of facilities owned by this taxpayer?

A. You will have to be a little clearer; what do you mean by facilities?

Q. Well, I believe you said you had some kind of equipment you used in making motion pictures?

A. Yes, sir. [342]

Q. Maybe I can demonstrate what I mean from one of these returns. For instance, I show you a return here for 1922, which you examined and said

(Testimony of Cecil B. de Mille.)

was one of the income tax returns of the taxpayer, and that return shows an item which says, "Rent of props."

A. Yes.

Q. What does that mean?

A. That means properties of the company owned which were charged to the production of the picture. May I see that again? I want to be sure I have answered correctly.

Q. Yes.

A. Yes, sir. Those were special props of some sort that we owned.

Q. I show you one of the other returns, which is the return for the year 1928 of the taxpayer, which you have identified and I call your attention to the line showing "use of production equipment", would that be equipment used in the production of a picture?

A. Yes, sir, I imagine so. I do not know what the detail is; I do not know whether it is some special case or not.

Q. Did the taxpayer ever charge the distributor for the use of its lands in any way when it was making a picture?

A. I do not recall so. I do not recall that, Mr. Leming; I cannot answer it.

Q. Did it charge rental for cameras?

A. That, I cannot answer.

Q. Now, Mr. de Mille, what was the first income which was received by the partnership which was organized in 1920?

(Testimony of Cecil B. de Mille.)

A. From pictures, or real estate?

Q. I beg your pardon? [343]

A. From pictures or real estate?

Q. I say, what was the first income the partnership received?

A. I will have to have consultation with the books to see whether the royalty check came in first, or the rents or profits from sale. I cannot recall the detail of which check came in first in 1920. Shall I look it up?

Q. Let me ask you this: What was its original business venture, the partnership?

A. When?

Q. What was its original business venture; in other words, did it start out making motion pictures?

A. I have already testified to the making of motion pictures, the business of selling and subdividing lands; the business of financing aviation in its infancy, and all of the answers I gave previously.

Q. I appreciate that. It did not have any money to buy real estate with until it had income from those pictures, did it?

A. A certain amount of real estate was turned over—you are speaking of the corporation or the partnership?

Q. Partnership.

A. No. The partnership started with \$25,000 capital, as I recall it, and a contract.

(Testimony of Cecil B. de Mille.)

Q. And then, with that sum and with the income from the pictures that were made, it then began to buy real estate and stocks and bonds, is that right?

A. Yes, real estate, stocks and bonds—I am trying to recall whether any real estate was turned into the partnership, but I think not at its inception; I do not think so.

Q. Now, when the assets of that partnership were transferred to the corporation——

A. Just a second. You say real estate; do you mean that to be the completion [344] of my answer; it is not; real estate, stocks, bonds, and the making of motion pictures. I do not think we bought any stocks and bonds for awhile. I do not remember just how the money was held, but in some way so as to pay us interest, so as to get the biggest return possible on it while operating our picture unit. The purpose of that money being turned in——

Q. Just a minute, please. I think you have answered the question I asked you, and that was until you had an income from the pictures you made there was no money to buy real estate, stocks and bonds, and so forth; is that right?

A. The money was there to make whatever use of it we wanted to, the \$25,000 to put to work for us to the best advantage, whether motion pictures or in a savings bank, or in cash——

Q. So the income from pictures, plus the original capital, was what you started investing with,

(Testimony of Cecil B. de Mille.)

what the partnership started investing with, that being the source of the funds?

A. Unless some money went into land. I do not remember whether we bought the property on Highland Avenue with some of the first \$25,000, or not. If the books show we did, some of our first income was from the rent of that building.

Q. When the assets of the partnership were turned over to the corporation for its stock, is it not a fact that those assets consisted wholly of your original capital of \$25,000, plus accretions by way of income from the moving pictures you have made for distributors, plus the returns on the investments the partnership had made?

Mr. MACKAY: If your honor please, I think the record shows what was turned into the corporation, what properties.

Mr. LEMING: I think he knows. I want to make it clear how this transfer was made and what passed to the corporation.

The MEMBER: Are you asking this witness to state what property was taken [345] over from the partnership by the corporation?

Mr. LEMING: I am asking him—the record shows what assets were taken over, if your Honor please; my question was the basis of those assets.

The MEMBER: You mean the source of the assets?

Mr. LEMING: Yes.

The MEMBER: Where they came from?

(Testimony of Cecil B. de Mille.)

Mr. LEMING: Yes. The original capital, plus accretions due to income from pictures being made, plus income from investment of any of the partnership funds. I do not think there is any controversy about that.

Mr. MACKAY: The record shows that certain assets consisting of cash and properties were turned over to the corporation. It shows \$30,000 in cash, as well as investments——

The MEMBER: Never mind all that. That is all in evidence, is it not?

Mr. MACKAY: Yes, sir. I am objecting on the ground that's covered in the evidence. The evidence shows clearly what was taken over by the corporation and I think it is immaterial.

The MEMBER: That is the reason I asked my question. I do not understand whether Mr. Leming was inquiring as to what was taken over, but he tells me he wants to know the source of these assets taken over. With that understanding of the question, is there any objection?

Mr. MACKAY No, not at all.

The MEMBER: He may answer.

Mr. LEMING: Do you want——

Mr. MACKAY: No, go on.

Mr. LEMING: The source of those assets simply lay in your original capital of \$25,000, plus the income from the pictures you had been making, plus, in turn, any investments, the return on any investments out of the same fund? [346]

(Testimony of Cecil B. de Mille.)

The WITNESS: No, sir, I do not think your use of the word "investment" is correct there. If starting a business, a real estate business, or a real estate branch of the business is considered as an investment, then perhaps your question is correct and I can answer it. They were returns from different branches of the business. There were also returns from investments.

Mr. LEMING: I think that is sufficient.

The MEMBER: No further capital was put into the corporation when it was formed?

The WITNESS: No, sir.

The MEMBER: So that whatever the corporation took over from the partnership had been accumulated by the partnership through the application of its previous earnings?

The WITNESS: Correct.

Mr. LEMING: Mr. de Mille, I show you the corporation income tax return for the year 1922 and call your attention to the line reading, under gross income, "producing motion pictures, \$188,500"; can you say just what that item consists of; what is meant by it?

The WITNESS: Not without reference to the books.

Mr. LEMING: Let me ask this further question and perhaps that will disclose to you more particularly what we wish: Does this item of \$188,500 include also your weekly salary of \$2500 which was being paid by the Corporation out of money advanced by Lasky Famous Players?

(Testimony of Cecil B. de Mille.)

The WITNESS: I am not sure I can answer that question. I am sure that I know—I presume that it was; I do not know just how accurate that answer may be.

By Mr. LEMING:

Q. Do you know what else it consisted of?

A. No. If the auditor will give me a couple of notes, I will be happy to testify in two minutes accurately on it. [347]

The MEMBER: Do you want the minutes on that item, Mr. Leming?

Mr. LEMING: Yes, sir.

The MEMBER: I am sure counsel will furnish it to you if the books are here.

Mr. MACKAY: It must be in a schedule attached to the return.

The MEMBER: Look at it.

Mr. MACKAY: I do not know, but I assume it is there; I have not seen the return.

The MEMBER: It is evident this witness cannot, out of his head, give all of the details in that substantial figure.

Mr. LEMING: That particular item is set out on the return, "Weekly payments from Famous Players-Lasky Corporation, \$188,500".

The WITNESS: Then, I can answer your first question. It is an advance against 30 per cent of the profits of the pictures produced by de Mille Productions.

(Testimony of Cecil B. de Mille.)

By Mr. LEMING:

Q. And was received in cash in that particular year?

A. Yes, by check.

Mr. MACKAY: What is the amount, Mr. Leming?

Mr. LEMING: This amount I have stated according to the statement on the return, is the weekly salaries from June 10, 1922 to December 31, 1922.

Mr. MACKAY: No, it is not the weekly salaries. It does not so show; it says weekly payments.

Mr. LEMING: Weekly payments, yes.

The WITNESS: That would not be salaries. If it shows salaries there is a misprint of some sort.

Mr. LEMING: The same item is carried on the face of the return.

The WITNESS: Does it show salaries?

Mr. LEMING: It reads, "Producing motion pictures". [348]

By Mr. LEMING:

Q. That is the income item stated on the face of the return, is it not?

A. Yes.

Q. No, Mr. de Mille, I do not want to interpret your return or get you confused, and that is the reason I am asking you if you can say what it is?

A. I cannot say.

Mr. MACKAY: May I ask, Mr. Leming, if you are going to put these returns in evidence?

Mr. LEMING: Yes, I am going to offer them.

(Testimony of Cecil B. de Mille.)

Mr. MACKAY: I have no objection to them.

Mr. LEMING: I am going to offer now, then, the returns for 1922 to 1929, inclusive.

The WITNESS: It is stated here very clearly, "Weekly payments from Famous Players, \$188,500".

Whereupon the respondent offered and there were received in evidence, without objection, the income tax returns of the taxpayer for the years 1922 to 1929, inclusive. The said returns were marked as Respondent's Exhibit "H".

Continuing, the witness testified:

By Mr. LEMING:

Q. We are speaking of this salary of \$2500 paid by Lasky Famous Players to the taxpayer---

A. No, sir, no salary of \$2500 was paid by the Lasky Company to the taxpayer. There is no such item.

Q. Was any particular amount received from the Lasky Famous Players by you on account of your services, particularly?

A. No, sir, except the general agreement with the partnership or [349] corporation, whichever it was, to deliver my services as a director in the production of these pictures.

Q. I see. Then, your salary of \$2500 was salary paid by this taxpayer to you?

A. Correct.

Q. Did you withdraw that amount of salary in each of the years?

(Testimony of Cecil B. de Mille.)

Mr. MACKAY: We admitted and have proven it was paid and have gone into it at great length.

The WITNESS: You say for each of the years?

Mr. LEMING: Yes.

The WITNESS: That had better be checked.

Mr. LEMING: 1924, 1925, 1926, 1927, 1928 and 1929?

The WITNESS: Those salaries varied in accordance with the condition of the company.

Mr. MACKAY: If your Honor please, yesterday we put in the record here a statement from the books showing just exactly what salary Mr. de Mille received, from the books.

The MEMBER: Counsel just asked him if he received it and he said he did.

By Mr. LEMING:

Q. Mr. de Mille, you heard the testimony of the other witnesses who have gone ahead of you, I believe?

A. Yes, sir.

Q. And you have heard them testify about certain options which were taken by you from Mr. McCarthy and others at the time of the organization of the partnership?

A. Yes, sir.

Q. I call your attention to a document which bears your signature and [350] appears to have been sworn to on January 19, 1933.

A. That is my signature.

Q. That is your signature?

A. Yes.

(Testimony of Cecil B. de Mille.)

Q. And this is an affidavit executed by you, this document I have just called your attention to?

A. Yes, sir.

Q. I call your attention to that part of the affidavit reading as follows——

Mr. MACKAY: What page?

Mr. LEMING: Page 13. It reads as follows:

“There were many reasons why I insisted upon the options upon the interest of the other parties to the partnership and at the prices which were fixed; first, while they were of importance to the success of the company, I was much more important than any of them, and I felt that I was entitled at all times to be in a position to dominate the company; I wanted to be in a position at all times to be sure that none of the interests in the company could be transferred to anyone other than to someone I should be willing it should go to, and in order to accomplish this it was necessary that I should control those interests”.

Is that a correct statement of the situation?

Mr. MACKAY: We will admit so.

The WITNESS: I presume so.

Mr. LEMING: Reading further from the affidavit:

“We discussed what compensation should be paid to those whom I was associating with me as partners and whether they should work for a very low compensation and depend entirely upon their interest in the company for their profits, or whether

(Testimony of Cecil B. de Mille.)

they should be paid a fair compensation as they went along. It seemed to be the preference that a substantial compensation should be paid for the services [351] rendered by the respective partners and that they should participate to some extent in the company earnings as they were realized. I consequently felt under these conditions I should be entitled to exercise the options upon the interests of these respective parties at the amount of their original investment, if I desired so to do, and particularly, where, as I have stated, the other partners seemed to feel that they should be paid a reasonable compensation for their services to the company and should be entitled to some reasonable dividends in the meantime.”

Is that a correct statement of the situation?

The WITNESS: Yes, sir.

Q. Mr. de Mille, you testified, I believe, that from 1922 to 1929 the taxpayer made 18 pictures; is that right?

A. I think that is correct. You said from——

Q. 1922 to 1929, inclusive.

A. It was 20, I think, to 1931 or 1932.

Q. 18 pictures within the period——

A. I think I have it right here. It is 20 to 1932—
—you wanted the number from 1922, did you?

Q. No, I just asked you——

A. That is from 1920 to 1932.

Q. 18 pictures?

A. Yes.

(Testimony of Cecil B. de Mille.)

Q. Now, was each of those 18 pictures made under some one of the contracts in evidence in this proceeding?

A. Yes, sir. I am not certain whether the "King of Kings" is covered by that contract or not. There was a special financing contract in connection with the "King of Kings". [352]

Mr. MACKAY: I will state the "King of Kings" contract has not been introduced in evidence yet. I intended to do it and will introduce it later.

Mr. LEMING: In what year was the "King of Kings" made?

The WITNESS: 1926.

By Mr. LEMING:

Q. Who financed the making of the "King of Kings", Mr. de Mille?

A. A group of people in New York. The financing was procured by Frank Wilson.

Q. The two documents which you have before you and which have been offered in evidence by Petitioner's counsel, are they the documents or contracts under which that picture was made?

A. The situation here was that the Cinema Corporation had run out of money and they got outside financing and as to the contract they executed for that financing I am vague in my mind. I think probably I can answer the original question that they were all made by one of the contracts admitted.

Q. You mean the picture was made under one of the contracts already in evidence?

(Testimony of Cecil B. de Mille.)

A. Yes, I think these (indicating) merely cover financing by the New York group, I would say, I think you can get more competent testimony than mine on that, sir. To answer your first question I would say they were made under one of the contracts already exhibited and that these cover the financing of it and some percentages to come to us which were changed from the original contract by the additional financing required for the "King of Kings".

Q. Do you have before you all of the contracts relating to any special financing?

A. I have all that I know of, I did not make the contracts for the financing; that was done in New York by the distributors. [353]

Q. This taxpayer was not responsible for that financing?

A. No, sir, it was not responsible for it.

Q. Would you say, then, the "King of Kings" was made under the contract of November 23, 1920?

A. Is that with Cinema; is that the Cinema contract or the Pathe contract?

Q. That is Exhibit 6.

The MEMBER: That is the Lasky contract; the Pathe is Exhibit 10 and the Cinema is Exhibit 9.

The WITNESS: My recollection of that is it was made under the Cinema contract; that it was not made under the Pathe but under the Cinema contract and additional financing was necessary.

(Testimony of Cecil B. de Mille.)

That is as near as I can recall it. I am a little hazy on the details of the financing.

By Mr. LEMING:

Q. But in any event the financing of the picture was done by someone other than the taxpayer, is that correct?

A. Yes, sir.

Q. Now, coming back, then, Mr. de Mille, to the question I asked you (R. 370) just before the "King of Kings" matter came up, that question being this: Did taxpayer finance any one of the 18 pictures which you say were made from 1920 to 1932?

A. May I ask a definition of the word "finance"?

Q. Put up the money to make the picture.

A. Yes, I would say yes to that. If I have the correct meaning of what you mean by financing. We arranged with a distributor—

Q. To put up the money?

A. To deliver to us the money with which we made the pictures.

Q. Your thought about the term "financing" was you made an arrangement for [354] some one to put up the money; is that right?

A. That is not expressed, perhaps, in the way I would express it, but that is the gist of it. We made arrangements for some one to provide the cash with which we did the producing.

Q. In every case, then, of the 18 pictures, in each one of them, you made arrangements with someone else to put up the cash to produce the picture?

A. Yes, sir, that is correct.

(Testimony of Cecil B. de Mille.)

Q. Were any of those 18 pictures failures from a financial standpoint?

A. Yes.

Q. How many of them?

A. You mean by that, I presume, did they fail to get back their production cost.

Q. Well, I should think that would be it, yes.

A. May I refresh my memory on the gross of one picture?

(Discussion off the record.)

The WITNESS: There are three there that if you deduct the cost of distribution from them, I should say they would have shown a loss of some sort.

By Mr. LEMING:

Q. In what year were those particular ones made?

A. 1925, 1928 and 1930.

Q. Now, can you state from your data how many pictures were made from 1924 to 1925, inclusive?

A. From 1924 to 1929, inclusive.

Q. Confining it to those years.

A. Nine pictures.

Q. How many, then, were made subsequent to 1929?

A. Subsequent to 1929?

Q. Yes.

A. Five. [355]

Q. You testified on direct examination that you very nearly had to put up some money on the "Ten Commandments"; is that right?

(Testimony of Cecil B. de Mille.)

A. Yes, sir.

Q. You did not, did you?

A. Let me see. We paid the director of the picture——

Q. Who was the director?

A. I was.

Q. And who paid the director?

A. Cecil B. De Mille Productions.

Q. How much was paid the director?

A. I think \$2500 a week.

Q. A week?

A. Yes, sir.

Q. For how long?

A. 13 weeks at \$2500. I have the figures here. It was 13 weeks at \$2500 and 39 weeks at \$1500, \$91,000 that year.

Q. Does your employment by this taxpayer, or did it at that particular time, call for a weekly salary in those amounts throughout the year?

A. Yes, sir.

Q. Now, when you say this taxpayer had to pay the director's salary in connection with the "Ten Commandments" for the period you have mentioned, what do you mean by that?

A. That I was directing the picture and that every Wednesday they handed me a check for \$2500 for so doing.

Q. Who handed you that check?

A. The secretary of Cecil B. de Mille Productions, Inc. [356]

(Testimony of Cecil B. de Mille.)

Q. Well, Lasky Famous Players were financing that picture, were they not?

A. Yes, sir, Famous Players-Lasky were financing that picture.

Q. Did they pay this taxpayer anything?

A. No, sir.

Q. You say they did not?

A. No, sir, they did not.

Q. You mean this taxpayer did not get——

A. Or the taxpayer?

Q. Yes.

A. I misunderstood you. Did they pay them anything?

Q. Yes.

A. I do not know whether there is a legal twist to the word "paid"; they advanced 6500 a week against 30 per cent of the profits we were making.

Q. You mean at the same time this taxpayer was paying you \$2500 a week, Lasky Famous Players was advancing to the taxpayer \$6000 a week?

A. \$6500, as I recall it.

Q. A week?

A. A week.

Q. Well, did this taxpayer pay for producing the "Ten Commandments"?

A. Did we pay for producing it?

Q. Who paid out the money for producing the "Ten Commandments"?

A. We made the arrangement with Famous Players they should finance all of our pictures, in-

(Testimony of Cecil B. de Mille.)

cluding the "Ten Commandments", during the life of the contract between the partnership and then the corporation, and Famous Players.

Q. What was the cost of the "Ten Commandments"?

A. \$1,475,000.

Q. Who paid that?

A. It was advanced by the Famous Players-Lasky to the Cecil B. de Mille [357] Productions, Inc.

Q. By the way, Mr. de Mille, does your salary at any time go as a charge against the cost of any of these pictures.

A. No, sir, you cannot charge advanced profits as part of the negative cost.

Q. In the case of those pictures which failed to pay a profit, who sustained the capital loss?

A. In one instance, the Cinema Corporation of America, and in a second instance, which was "The Godless Girl", on account of the advent of sound, I believe Pathe, Inc.; the third in the case of Madam Satan, Metro-Goldwyn-Mayer. That is indeterminate yet. It is still being exhibited and it may perhaps wipe out this deficit. In each instance we had to guarantee our profit would be so much on a picture.

Q. And you received the guaranteed amount?

A. I think in every instance. I am not sure whether we got the full guaranteed amount from "The Godless Girl" or not.

(Testimony of Cecil B. de Mille.)

Q. Could you refresh your recollection on that?

A. The sound situation came in there—I can in one second.

(Discussion off the record.)

The WITNESS: I am willing to testify we re-received it.

By Mr. LEMING:

Q. So, in each instance you got your guaranteed profit?

A. We received the guaranteed profit, yes, sir.

Q. You testified on direct examination, Mr. de Mille, this taxpayer had agreed to guarantee the payment of certain salaries under the Cinema contract. Am I quoting you correctly there?

A. I do not remember. I am afraid I will have to be helped as to the direct examination. [358]

Q. Do you recall testifying to the fact that this taxpayer did, whether it was required to or not, guarantee the payment of some salaries under the Cinema contract?

A. Oh, I think I probably know what you allude to. I alluded to one or two instances when the pay check did not arrive from New York and Productions got the bank to pay the de Mille Pictures check, to see it went through the bank. De Mille Productions was responsible for the de Mille Pictures check pending the arrival of the Cinema check from New York to de Mille Pictures.

Q. When did this occur?

A. Do you want the year?

(Testimony of Cecil B. de Mille.)

Q. Yes.

A. I should say 1925.

Q. 1925?

A. Yes, sir.

Q. What was the particular amount you guaranteed payment on?

A. I do not recall what the payment was.

Q. Will you refresh your recollection? I understand your books are all here.

Mr. MACKAY: If your Honor please, the guarantee would hardly be in the books. I think it is an unfair question to ask this witness. He is still speaking of guarantees and the witness has said he does not know. I should think that would be sufficient.

By Mr. LEMING:

Q. What picture were you working on at that time?

A. I do not believe I was directing any picture at that time. I am not certain on that point. I was supervising and producing the entire production for the Cinema, which consisted of 22 pictures that year, during which time I only directed two. We produced 22 in 1920; it was some such large amount, a large number of pictures. [359]

Q. When you say "We produced 22 pictures", to whom do you refer?

A. I am speaking of the de Mille Productions operating, in the case of Cinema, through de Mille Pictures Corporation. I think that deal has been fully explained. We lifted the productions out and put it into de Mille Pictures.

(Testimony of Cecil B. de Mille.)

Q. In the case of these guarantees you are talking about, as I understand it, some weekly pay check was overdue and by reason of your guarantee the bank went ahead and made the disbursements for that week?

A. Yes.

Q. How often did that happen?

A. I think perhaps twice.

Q. Twice?

A. I think so. May I refresh my memory?

Q. Yes.

A. (Discussion off the record).

The WITNESS: It happened several times.

Mr. LEMING: I will have to move to strike the statement of any bystander; I think——

The MEMBER: I do not understand the bystander's statement went on the record. I understand Mr. de Mille is refreshing his recollection and he may now testify as to what his recollection tells him.

The WITNESS: As I say, three or four times.

By Mr. LEMING:

Q. All in what year?

A. Probably all in 1925. I do not give that as an absolutely positive statement, however.

Q. Who were those checks coming from which were overdue? [360]

A. The Cinema Corporation of America, or else the Motion Picture Capital Corporation, or some of the financial structures through which the banks were providing funds for the operation of these companies on the Coast.

(Testimony of Cecil B. de Mille.)

Q. There was no obligation on the taxpayer to make that guarantee, was there?

A. Yes, I should say so. I should say the entire standing of de Mille Productions, the good will of the whole organization, was at stake.

Q. Do you mean a moral obligation?

A. We regard it as being more than a moral obligation; it was a financial obligation.

Q. Was there a contractual obligation?

A. A moral obligation—I see what you mean.

Q. So there was no contractual obligation?

A. Not for us to pay it.

Q. Or to guarantee it?

A. With the exception of one or two of the players, the stars we took over from Famous Players, Rod Laroque, Leatrice Joy—the staff that we brought with us that way, the de Mille Productions staff, I presume, we were under obligation to pay.

Q. Were those particular persons you name involved in that payroll?

A. Yes.

Q. How much were those three or four payrolls?

A. They were quite a large amount.

Q. How much per week?

A. Can I refresh my memory?

Q. Yes.

(Discussion off the record) [361]

The WITNESS: I should say the smallest was \$16,000 and the largest \$80,000.

(Testimony of Cecil B. de Mille.)

By Mr. LEMING:

Q. And that occurred about three or four times?

A. Yes, sir.

Q. And in making that statement you are not sure that is the number of times?

A. No, sir.

Q. Do you think it possibly occurred only on two occasions?

A. No, I should be fairly sure it occurred on either three or four.

Q. Well, the Cinema people, or the persons who were sending the check to pay those weekly salaries, were legally obligated to pay them, were they not?

A. Yes, sir.

Q. When you spoke of an obligation on the part of the taxpayer to pay the salaries of certain persons, are those obligations set forth in some one of the contracts which have been offered in evidence on behalf of the petitioner?

A. I think in the contract of settlement of the separation between de Mille Productions and Famous Players-Lasky Corporation, it states we shall take with us these stars I have named, Rod LaRoque, Leatrice Joy, and so forth, and that staff, I presume—I presume that puts the obligations on us to pay their salaries. Famous Players assigned their contracts to us and we took over their contracts. That is my recollection.

Q. Whatever obligation there is, is it represented by some contract in evidence?

A. I would say the contract I have just named, I should think.

(Testimony of Cecil B. de Mille.)

Q. That is Exhibit 14, is it not?

Mr. MACKAY: Famous Players-Lasky is not it, is it?

The WITNESS: It is not. It is the contract of settlement.

The MEMBER: The termination contract is Exhibit No. 11.

Mr. LEMING: Let me see Exhibit No. 11, please. [362]

By Mr. LEMING:

Q. I call your attention to Petitioners' Exhibit No. 11 and ask you if that is the contract to which you refer?

A. No, sir.

Q. It is not?

A. No, sir.

Q. Will you describe again the contract under which—that is the contract with Pathe, but this contract of settlement is between Famous Players-Lasky and de Mille Productions.

A. I presume there is such a contract. It may be only data that I am recalling. That contract gives us the right of taking with us certain stars. We took those stars, which put the obligation of their salaries upon us.

Q. The obligation you are speaking about, is it in the document I now hand you?

A. No, sir.

Q. It is not?

A. No, sir. I hope, at least, that is a correct answer.

(Testimony of Cecil B. de Mille.)

Q. Would you say the contract is or is not in evidence, Mr. de Mille?

A. I should say the contract is in evidence; that it is implied; that it gives us the right to take certain salaried people with us when the contract is terminated. It was terminated and we took those with us and their salaries were paid by us, or we became responsible for their salaries. I presume they were paid by us.

Mr. LEMING: Mr. Clerk, may I have all of the exhibits which have reference to contracts?

(Discussion off the record) [363]

The WITNESS: There is no obligation expressed in the contract. The way I understand the question is did it call for us to pay money to someone?

By Mr. LEMING:

Q. Yes.

A. I should say it does not.

Q. So there was no contractual obligation on your part to pay anything to the actors you have mentioned?

A. What is the question?

Q. There was no contractual obligation on the taxpayer's part to pay money to the actors you have mentioned?

A. Not unless we exercised the option. This does not compel us; it gives us the right, and we exercised the right, and I presume, having exercised it, they—if we had not exercised it they would not have been working for us.

(Testimony of Cecil B. de Mille.)

The MEMBER: And whatever you paid them is reflected in your bookkeeping?

The WITNESS: I suppose so, in the expenses.

By Mr. LEMING:

Q. Mr. de Mille, did this taxpayer sustain a capital loss by reason of the coming of sound pictures?

Mr. MACKAY: If your Honor please, I do not want to interfere with the cross examination, but what might be a capital loss is something that I, having had eight years' experience, have difficulty in trying to find out.

The MEMBER: This witness has an understanding of the term, because he previously answered a question in connection with it. Let us see what he has to say.

The WITNESS: I will preface my remarks by saying if I understand what a capital loss is, we had a very material one, because everything we owned shrank in value overnight. [364]

By Mr. LEMING:

Q. What is your understanding of the capital loss in connection with your answer just made?

A. I wish you had not asked me that, but I should say the disappearance of values that we had.

Q. Values of what, Mr. de Mille?

A. Money and equipment; money, equipment, real estate, or whatever you own, I should think.

Q. How did it affect your money?

A. How did it affect money?

Q. Money that you had.

(Testimony of Cecil B. de Mille.)

A. It caused us to put out a lot of money we did not expect we would have to spend.

Q. Did I understand you to say you sold your silent equipment for \$80,000?

A. Yes, sir, losing \$20,000 on that particular deal.

Q. That was a capital loss?

A. It was one of them.

Q. Did the taxpayer take that loss on its income tax return?

A. The books would have to show that, I do not know.

Q. Specifically, then, what other losses of that sort did you have on account of the coming of sound?

A. First the loss on any profits from the picture we had just made——

Q. That is a loss of profits, is it not; a loss of an anticipated profit, you mean?

A. Yes, sir, it is the loss of an anticipated profit.

Q. And you had already received your guaranteed profit, I believe you said? [365]

A. We had not received it. The company was not in a financial position to pay it. They offered us 40 per cent of the last picture we had made, "The Godless Girl", until the amount of \$200,000 should be reached, and we gambled with them, as I remember it, as to whether or not that amount would be reached through the sale of the picture, because of the very embarrassing position they found themselves in with a number of completed pictures in silent film and nothing but sound film salable.

(Testimony of Cecil B. de Mille.)

Q. I was inquiring whether I misunderstood you or not. I understood you to say you got your guaranteed profit in each instance?

A. Eventually, some years later. It worked out satisfactorily. The 40 per cent paid the amount.

Q. Now you said—and if I misquote you in trying to resurrect your direct testimony, correct me.

A. Yes.

Q. As I understood you, you said the taxpayer was obligated to buy some theatre stock?

A. Yes.

Q. Under what contract is that provided for?

A. It was never consummated. It consists of a verbal agreement. Mr. McCarthy and the attorney for the financiers and distributors in New York could not find a way of reducing the necessary obligation to writing in a way that was satisfactory to us, and consequently it was left in a verbal agreement that we would participate with them in the purchase of these theatre chains, they allotting certain amounts of stock to us from time to time in each deal they made, which they did and which we paid.

Q. There was, then, no written contract in that regard? [366]

A. That is correct.

Q. Do you remember the total extent of your investment in theatres, that amount?

A. \$258,700.

Q. In what year was that?

(Testimony of Cecil B. de Mille.)

A. It was in different years from 1926 to 1929.

Q. Will you give us the years and the amounts by years?

A. Yes, sir. In 1926, \$47,500; in 1927, \$26,200; in 1929, \$185,000.

Q. That accounts for the total?

A. Yes, sir.

Q. What was the investment in 1926 of \$47,500?

A. Pardon me.

Q. In what did you invest the \$47,500 in 1926?

A. The North American Theatres, the Golden State Theatres, the Bellingham Development in Washington and the Producers International——

Q. All of those were located in the Pacific Northwest?

A. No, sir, in different places. The North American, I think, is the chain I was trying to think of in Denver and the Middle West. The Golden State is in California. The Bellingham is in Washington and the Producers National covered some European activities of the company.

Q. Was that investment in the form of purchases of stock?

A. Yes. I think in every instance it was in the form of purchases of stock.

Q. How about 1927; was that in the form of purchases of stock or stocks?

A. 1926?

Q. I have just inquired as to 1926.

A. 1927?

Q. Yes, was that \$26,200 invested in stocks?

[367]

A. No, sir.

(Testimony of Cecil B. de Mille.)

Q. What was the form of the investment?

A. \$6,200 in stock and \$20,000 payment on a theatre, the purchase of that theatre.

Q. Was that an outright purchase of a theatre on your own account?

A. Yes.

Q. No other persons were interested in that particular theatre?

A. No, it was part of a chain to be turned in on one of the chains we were negotiating for.

Q. And the taxpayer purchased it outright and owned it as its own property?

A. Yes.

Q. Now, in 1929, what was the character of the investment there?

A. The Fox Theatres.

Q. Stock?

A. Fox.

Q. But, was it the stock of the Fox Theatres?

A. Yes.

Q. What is the particular title of the corporation?

A. Fox Theatre Corporation.

Q. You bought stock, did you?

A. Yes.

Q. What I wanted to get at is what was the particular name of the corporation, the name of the corporation you bought stock in?

A. Fox Theatres, Incorporated.

Q. That is the regular name under which it is known?

(Testimony of Cecil B. de Mille.)

A. Yes. [368]

Q. Now, how long did you own that particular stock?

A. Until I was nearly ruined getting rid of it. I should say a year or so. I can you give you the exact date if you would like to have it.

Q. You bought it in 1929?

A. Yes.

Q. How many shares?

A. I will have to be refreshed on that. Shall I?

Q. That is all right.

(Discussion off the record.)

The WITNESS: 5,000 shares. I remember the incident now. They tried very much to make me take 10. Mr. Mayer discussed with me at length the great good will the de Mille Productions should show for its distributor and the new amalgamation the distributor was making with Fox and he felt it incumbent upon us to buy 10,000 shares of this stock, but we were able to satisfy the distributor by buying 5,000.

By Mr. LEMING:

Q. He could not have made you buy a single share, could he?

A. He could not have made us?

Q. Yes.

A. No, he could not.

Q. You bought 5,000 shares of your own accord; is that right?

A. On our own accord, but not with our own desire.

(Testimony of Cecil B. de Mille.)

Q. No one could have made you buy it, could they?

A. No, sir.

Q. Did you buy it on the New York Stock Exchange?

A. We bought it—I believe they were dealing through Hutton; we bought it through Hutton & Company of Los Angeles. [369]

Q. Was that a listed stock?

A. Yes.

Q. Listed on the New York Stock Exchange?

A. I do not know whether it was on the Exchange or the curb.

Q. But it was on one or the other?

A. I am sure it was.

Q. Just what happened to that Ince Studio which was purchased, Mr. de Mille; where did it go from this taxpayer?

A. To the de Mille Pictures Corporation.

Q. And who got the stock of the deMille Pictures Corporation?

A. The Cinema Corporation of America.

Q. And what was the total amount of money paid on that studio by this taxpayer before those transactions took place you have just mentioned?

A. \$50,000.

Q. It paid no more than that?

A. Not that I recall.

Q. I believe it has been testified here that eventually this taxpayer made somewhere in the neighborhood of \$1,000,000 on the Cinema stock?

A. No, sir, that is not correct.

(Testimony of Cecil B. de Mille.)

Q. I wish to be corrected, then.

A. That is Pathe stock. I think the testimony with reference to that concerned Pathe stock.

Q. And Cinema stock, had it gone in the meantime into the Pathe Combination?

A. Yes.

Q. And you had acquired your stock by reason of owning stock in the Cinema Corporation?

A. I think so. [370]

Q. And then getting that far, is the statement about right—

A. When you say “you”, I presume you are alluding to de Mille Productions?

Q. I am speaking of the taxpayer.

A. Yes.

Q. There was, then, a profit of how much, if you can state approximately, or if you wish, you may refresh your recollection as to the total amount.

A. I will have to ask the auditor.

Mr. MACKAY: We have agreed upon a profit, Mr. Leming, Mr. Collins and I.

By Mr. LEMING:

Q. May we have the correct profit?

A. My answer to that would be around \$800,000. How near correct that is, I am not sure.

Q. I have—I think the figure was \$834,000.

Mr. MACKAY: It is all shown here. Every transaction the company ever had is reflected in Exhibit No. 2.

Mr. LEMING: All right, thank you; that is good.

(Testimony of Cecil B. de Mille.)

By Mr. LEMING.

Q. Now, you spoke on direct examination of a picture, of an Al Jolson picture which grossed nearly \$3,000,000?

A. That was my understanding. I had no contact with that picture at all. That is what rumor has it.

Q. You had nothing to do with it?

A. No, sir.

Q. And when I say "you", I mean the taxpayer?

A. The same answer.

Q. You know nothing of what it did actually gross?

A. No, sir, except the statement of the Vice President of the company. [371] But that was made in a general meeting of the Producers Association and he may have been making it just to impress the other producers.

Mr. LEMING: May I see Exhibit 7, please?

By Mr. LEMING:

Q. Now Mr. de Mille, on direct examination I understood you to say that certain contracts with Lasky Famous Players were subject to cancellation on sixty days' notice; is that a correct summary of what you might have said?

A. Yes, sir. I do not recall whether it was 30 or 60 days.

Q. Whatever the terms of the contracts were, are the periods of termination all set forth in them?

A. Yes, sir.

(Testimony of Cecil B. de Mille.)

Q. So that each contract would be determined according to its own provisions?

A. Yes, sir.

Q. How long has Mr. Fisher been with the taxpayer, Mr. de Mille?

A. He is not with us now, sir.

Q. How long was he with it; in what years?

A. From its formation to 1925—whether it was in the spring of 1926 that he left, I do not know, but it was thereabouts.

Mr. MACKAY: I think the record shows that.

Mr. LEMING: I remember the date he terminated his service. I was trying to get at his original employment date.

The WITNESS: 1926.

By Mr. LEMING:

Q. That was the date of his separation?

A. If the document states 1926, it is so.

Q. That was the time he left the taxpayer, but he had been with it how long prior to that? [372]

A. From the formation of the partnership.

Q. Excuse me; I remember now you testified to that; that is right.

Mr. LEMING: May I have the minutes of the meeting which declared or authorized a stock dividend of \$400,000 in 1928?

The MEMBER: Hand him the exhibit, Mr. Clerk.

Mr. MACKAY: Is that not in evidence?

Mr. LEMING: No, it is not.

Mr. MACKAY: What is it?

(Testimony of Cecil B. de Mille.)

Mr. LEMING: The stock dividend of 1928, the minutes authorizing that stock dividend.

Mr. MACKAY: I thought it was in evidence. Mr. Leming.

The WITNESS: I know those minutes. If you care to ask the question, I can answer.

By Mr. LEMING:

Q. You started to say something, Mr. de Mille. Do you wish to say something about this particular set of minutes?

A. Not if you have them, no, sir.

Q. These are minutes counsel has shown me as of October 3, 1927. I am going to ask you to look at the minutes, Mr. de Mille, and see if you were present at the time that stock dividend was declared, October 3, 1927?

A. My recollection is that I was, I think I signed the minutes.

Mr. LEMING: I offer these in evidence for the purpose of showing a stock dividend. They are the minutes of October 3, 1927. I ask that leave be granted to substitute a copy instead of the original.

Mr. MACKAY: There is no objection.

The MEMBER: It will be received as Respondent's Exhibit I.

(The document referred to was received in evidence and marked "Respondent's Exhibit I", and made a part of this record.) [373]

Mr. LEMING: Now, counsel has kindly stated that he will stipulate that of the authorized \$800,000 increase of capital stock, \$400,000 was actually issued—

(Testimony of Cecil B. de Mille.)

Mr. MACKAY: Those minutes just introduced in evidence contain a resolution authorizing an increase in the capital stock up to \$1,500,000, and there was \$400,000 total par value originally issued. A \$400,000 stock dividend was then declared, bringing the total issued stock up to \$800,000 total par value.

Mr. LEMING: That is reflected in Exhibit No. 2, for the year 1928?

Mr. MACKAY: Yes, it is all there.

Mr. LEMING: Now, Mr. de Mille, there has been some testimony here about who owned the stock of the corporation from the time of its inception down through the year 1929. Will you just state to the Court who the actual owners were of the capital stock in each of the years, 1924 to 1929, inclusive?

The WITNESS: I would have to have a list of the stockholders in order to answer your question.

Mr. LEMING. May he be supplied with that?

The MEMBER: In other words, your answer is the true owners of the stock were those in whose names the stock was issued?

The WITNESS: Yes. Mr. Fisher made the statement he did not feel so; our opinions differ on that point. I thought he was——

The MEMBER: The record contains a list of the record stock owners for those years, I believe.

By Mr. LEMING:

Q. Which one of those stockholders was your daughter, Mr. de Mille.

A. Mrs. Calvin.

(Testimony of Cecil B. de Mille.)

Q. And she has been known by that name each time the stock has stood in her name? [374]

A. Some of the stock may have been issued to her before she was married, in which case it would have been under the name of Cecilia de Mille. I do not remember just when it was issued, but I think it was on either her 18th or her 21st birthday, I do not remember which one, that she was given a block of stock by me.

Q. Now, in the case of Mrs. Adams and Mr. McCarthy, you purchased their shares of stock?

A. Yes, sir.

Q. And that occurred in the years 1924, in the case of Mr. McCarthy and 1926, in the case of Mrs. Adams?

A. Whenever the record shows. I do not remember the date.

Q. And those two, Mr. McCarthy and Mrs. Adams were the ones as to which you had taken an option in 1920, were they not?

A. Yes, sir.

Q. And in acquiring the stock you acquired it under those options, did you not?

A. The options were on an interest in the partnership and I presume those were made to carry over to the stock. I do not know whether they would be so considered or not, but I think Mr. McCarthy has said he considers that his did; what the legal status of that is, I do not know. We have a good deal of confidence in each other, and the other partners had a good deal of confidence in the

(Testimony of Cecil B. de Mille.)

fact that I would deal fairly with them financially. They knew I had no intention of beating them out of any money on that deal. They knew if there was a profit they would get it, and they got a very good profit and had a living out of it ever since, and that was 12 or 13 years ago.

Q. It is my recollection now the agreement under which they sold the stock to you, that those agreements are in evidence. I had overlooked that. [375]

A. I do not know whether the legal side of whether the option from the partnership carried over to the stock, whether that is so or not. The only agreements that there are are in evidence.

Q. Mr. de Mille, it has been testified that certain property known as the Laughlin property, on which a residence was situated and in which you lived, was transferred by you to the corporation in satisfaction of an indebtedness of yours to the corporation; is that correct?

A. Whether it was in entire satisfaction of the obligation, I do not remember. There was a mortgage on the property at the time.

Q. Was it in entire satisfaction of your indebtedness to the corporation?

A. I think it was, and something over.

Q. When did that indebtedness arise, Mr. de Mille?

A. I would have to be coached again from the books, I am afraid. If that was the \$90,000 which I borrowed at one time—I would have to ask the auditor, if I may. Shall I ascertain what it was?

Mr. LEMING: Pardon me a minute.

(Discussion off the record).

(Testimony of Cecil B. de Mille.)

Mr. MACKAY: The petitioners' exhibit, being an application to the corporation commission to issue stock shows that certain assets were acquired by the corporation in exchange for stock and that among those assets was an item of loans receivable totaling \$145,578.45. Those loans receivable, the portion represented by notes, totaling \$138,961.62, of that portion, \$110,013.33 is represented by the note of Cecil B. de Mille. The loans not represented by notes total \$5,468.92, and there is an amount of interest due on notes of \$817.03. The total of the notes and the loans and the interest that I have read total \$145,247.57. After the corporation was organized there was an audit made [376] and it was found there was a discrepancy between the amount shown in the application to issue stock, which showed a total of \$145,578.45, whereas the original audited amount was \$145,247.57.

Mr. LEMING: That is agreed to as a fact.

(Discussion off the record.)

By Mr. LEMING.

Q. Mr. de Mille, under these contracts I have observed a provision in some of them, possibly in all of them, that accountings are to be made in respect of the——

A. Accountings?

Q. Yes. At identical periods in respect of the cost of the production of one of these pictures, and subsequent accountings——

A. To whom, sir; do you mean to the other party in the contract? I am trying to understand the question.

(Testimony of Cecil B. de Mille.)

Q. As I recall the contracts, they provide for an accounting?

A. Yes, sir.

Q. I wanted to get at this point: Did you receive a copy of any of those accountings periodically to you as—and when I say you I mean the petitioner?

A. The corporation. You mean on the settlement of royalties did we receive an accounting showing the gross?

Q. An accounting during the time of producing the picture, when it was being made, and then at periodical times as royalties were received?

A. Yes, we received an accounting.

Q. At periodical times?

A. I presume so.

Q. Showing the cost of the making of the picture?

A. Yes, sir. [377]

Q. And a statement of royalties?

A. Yes, sir.

Q. Are those periodical accountings in the court room now?

Mr. MACKAY: Mr. Leming, I do not think we have those. We gave full figures and an accounting of all the expenditures—I think Mr. Fisher covered that; he said that he went into the costs very carefully.

Mr. LEMING: That is different, Mr. Mackay, from the accountings we have in mind here. [378]

At this point counsel for petitioner offered and

(Testimony of Cecil B. de Mille.)

there was received in evidence, without objection, a statement analyzing the royalty account produced by Cecil B. deMille Productions, Inc., marked Petitioner's Exhibit No. 16.

The following proceedings then occurred:

Mr. MACKAY: I should like to offer at this time as a part of Exhibit No. 2, or, as Exhibit 2-B-1—that will clarify, if your Honor please, some of the figures contained in Exhibit B of Petitioner's Exhibit 2.

Mr. LEMING: No objection.

The MEMBER: It may be so received. Can we detach that and take it as a part of Exhibit 2?

Mr. MACKAY: That would make it simpler.

It will be detached and made a part of Exhibit No. 2.

Mr. MACKAY: Your Honor, at this time I also offer amendments to petition for the Productions Company, as well as to the Cecil B. deMille petition. I understand counsel has no objection to those amendments. The amendments relating to the Productions refer to the constitutional question. I am raising an additional constitution question with respect to Section 220 and Section 104.

Mr. LEMING: I have no objection, but would like to enter a denial to any allegation of fact that may be contained therein.

The MEMBER: Do you wish to state your amendment or put it in writing and file it?

Mr. MACKAY: They are in writing.

The MEMBER: Since there is no objection to the amendments to the petition, they may be re-

(Testimony of Cecil B. de Mille.)

ceived and taken into the record, and let the record show a general denial on the part of the respondent, both as to statements [379] of law and statements of fact contained in the amendments.

Mr. LEMING: There is no issue before the Board in the case of the corporation except the 220 issue.

The MEMBER: Is that correct?

Mr. MACKAY: That is correct.

The MEMBER: Very well.

At this point the respondent offered and there were received in evidence as Respondent's Exhibit "J", without objection, the individual Federal income tax returns of the witness Cecil B. de Mille for 1920 to 1923, inclusive.

Upon redirect examination the witness (Cecil B. de Mille) continuing testified as follows:

By Mr. MACKAY:

Q. Mr. de Mille, I think on cross examination yesterday Mr. Leming asked you if the salary that had been paid by Cecil B. de Mille Productions, Inc., to you and Mrs. de Mille was obtained from Famous Players-Lasky or from some of the other financing organizations you have enumerated. Have you any explanation to make with respect to that testimony?

A. Yes. I believe I answered that it was. To be accurate, I should correct the answer to say that that money derived from advances from Famous Players-Lasky went into the general account of the Cecil B. de Mille Productions, Inc., along with the returns from real estate, stocks, bonds, and other ventures, particularly flying, and our checks were

(Testimony of Cecil B. de Mille.)

paid from the general funds of the de Mille Productions.

Q. Mr. de Mille, yesterday you were shown Respondent's Exhibit E, and that portion thereof which is the return of the partnership for the year 1921. I believe you were asked to point out if any of the staff, so-called staff, [380] received a compensation from the partnership. I notice on the back of this return, under salaries, Cecil B. de Mille, Constance A. de Mille, Ella King Adams, Jeanie Macpherson, John H. Fisher, J. F. Dawson, and Gladys Rosson. Did I understand you to testify a little while back that Jeanie Macpherson was a member of the staff?

A. Yes, sir, She was a scenario writer.

Q. What was Mr. Dawson's capacity?

A. Auditor.

Q. Now, Mr. de Mille, did Cecil B. de Mille Productions, Inc., when it operated in the studios of other concerns under this financing arrangement, did it maintain a kitchen and separate offices?

A. Yes, sir.

Q. In all the studios that it worked, did it do that?

A. Yes, sir.

Q. And the kitchen, the maintenance of the kitchen, the kitchen expenses were incurred by the Cecil B. de Mille Productions, Inc., were they not?

A. Yes, sir, that is customary in all studios.

Q. Was a separate office constructed for the Productions staff at the Metro-Goldwyn-Mayer studio?

(Testimony of Cecil B. de Mille.)

A. Yes, sir, separate office and separate film vaults and separate suites of offices for its writers, and so forth.

Q. I will ask you why Cecil B. de Mille Productions, Inc., did not take back the Ince Studio upon the termination of the Pathe contract?

A. Because the Ince Studio had almost overnight become valueless on account of the development of sound. Every studio has to be completely [381] rebuilt after the development of sound. All of the stages were useless or valueless; all of the lighting equipment was valueless. The lights that were used for the silent pictures were called Kleig lights and they made a humming noise, which made them valueless for sound pictures or sound cameras. We had a large group of wind machines, which are used a great deal in pictures, silent pictures, and those wind machines, we still have some of them we are unable to sell because they were all powered by Liberty motors, and, of course, when sound came in, you could not have a gentle breeze blowing over the daisies with the roar of a Liberty motor going.

Q. You were asked to some extent about your residence. Will you please state whether or not you paid a rent for the residence you occupy?

A. Yes, sir, we do.

Q. To whom?

A. Cecil B. de Mille Productions.

Mr. MACKAY: It may not appear from our stipulation, Mr. Leming, but the stipulation I will file now with respect to certain deductions is based

(Testimony of Cecil B. de Mille.)

upon a reasonable rental Mr. de Mille pays for the residential property. I just want to make sure that is a part of the record.

Mr. LEMING: The stipulation shows the amount of deduction which is allowed, as I recall, the amount of income as rental.

Mr. MACKAY: I think it amounts to about \$500 a month.

By Mr. MACKAY:

Q. Now, Mr. de Mille, at the time you organized the corporation, did you transfer all of your personal property to the corporation?

A. No, sir. [382]

Q. Has the corporation, since its organization—have you, since the organization of the corporation, owned property other than stock in your corporation?

A. Yes, sir, considerable.

Q. Will you tell the Court, over the period of years involved here, how much property you have had in your own name and what it consisted of, largely?

A. If I may refresh my memory, I can make it accurate. Do you want from 1921?

Q. 1923 would be sufficient.

A. To what year?

Q. To 1929.

A. 1923, notes and loans, \$79,308.05; stocks and investments, \$265,386.65; real estate, \$79,094.91; special ventures, \$27,358.03. In 1924, those amounts had increased by \$75,000. Do you want the detail in each one?

(Testimony of Cecil B. de Mille.)

Q. That is all right.

A. Notes and loans, in 1924, \$75,217.34; stocks and investments, \$205,314.39; real estate, \$220,632.59; special ventures, the same amount, \$27,358.03. In 1925—

Q. Will you give the total for that year? [383]

A. The total was \$628,522.35. That is for 1924.

Q. All right, in 1925?

A. In 1925 do you wish the gross or the details?

Q. The detail entries.

A. Notes and loans, \$45,980.36; stocks and investments, \$254,825.64; real estate, \$175,198.66; special ventures, \$28,108.03. The total amount for 1925 is \$502,730.69. In 1926, notes and loans, \$34,678.32; stocks and investments, \$273,304.44; real estate, \$218,937.44; special ventures, \$25,608.03; total, \$552,228.23. 1927, notes and loans, \$31,601.50; real estate, \$175,272.48; stocks and bonds, \$281,739.46; special ventures, \$3,958.56; total, \$492,599. 1928, notes and loans, \$70,679.17; real estate, \$185,299.85; stocks and bonds, \$305,135.11; special ventures, \$4,308.10; total, \$565,422.23. In 1929, notes and loans, \$166,115.76; real estate, 142,475.36; stocks and bonds, \$294,912.79; [384] special ventures, \$5,644.92; total, \$619,148.83. Do you want 1930, also?

Q. I think that is sufficient. Mr. de Mille, did this corporation, the Cecil B. de Mille Productions, Inc., carry on ranching and farming business?

A. Yes, sir.

Q. It also had city properties?

A. Yes, sir.

(Testimony of Cecil B. de Mille.)

Q. Both business properties and residential properties?

A. Yes, sir.

Q. They were not all income producing properties, were they?

A. Not all of them, but a majority of them were. Many of them showed losses and many showed profits.

Q. I will ask you if the undistributed earnings of the corporation—I will withdraw that. I will ask you if you took into consideration when you discussed the undistributed earnings of the corporation, the financial needs for the purpose of carrying on your real estate business?

A. Yes, sir, the reason we put mortgages on most of the large buildings was we did not dare reduce our surplus because we did not know when we were going to need it for pictures and development. Many of our business properties are very heavily mortgaged. The large buildings that we carry were heavily mortgaged and are a great responsibility. We stand a grave chance of losing them through lack of surplus to pay for them. [385]

Mr. LEMING: If your honor please, I think I shall have to move to strike that last part of the answer. It is not competent evidence in the absence of the particular evidence in respect of those mortgages. This grave chance of losing something thrown in in that fashion is prejudicial and is not based on anything in the record.

The MEMBER: What sort of particular evidence as to the mortgages do you want, Mr. Leming?

(Testimony of Cecil B. de Mille.)

Mr. LEMING: I would like to amend the objection to this extent: In the first place, that is a conclusion which must be arrived at from the facts, whatever the facts are. The mortgages, so far as I know, are not in evidence.

The MEMBER: I take it the amount of them is contained in the balance sheet?

Mr. MACKAY: I am quite sure there is a detailed analysis, also. That is all in there, your Honor, yes.

Mr. LEMING: This says, "mortgages", but I do not know what it applies to.

The MEMBER: This witness has expressed an opinion.

Mr. LEMING: Yes. I move to strike the opinion because it is wholly a conclusion which is one for the Board to determine, if it is necessary to be determined at all.

The MEMBER: I think he is competent to give it. Perhaps it will not have any weight, but I think he can give the opinion.

Mr. LEMING: I will withdraw my motion to strike. I do not think it is material, if your Honor please. [386]

By Mr. MACKAY:

Q. Mr. de Mille, yesterday I asked you about the value with respect to real estate and I then confined my questions to the year 1931. I now find that Exhibit No. 3, petitioners' Exhibit No. 3, takes into consideration the year 1932. I will ask you if your opinion as to the value of real estate that you gave

(Testimony of Cecil B. de Mille.)

yesterday in respect to 1931 would be the same you would attach to the year 1932?

A. Well, I should say it was perhaps a little bit lower in 1932. It was impossible to sell property at almost any price at that time. We had to take back properties from mortgagees and trustees that people were unable to pay for and we have not been able to sell one out of a million dollars worth of property. That is in round figures, of course.

Q. I notice from Exhibit 3, I think it is, the comparative balance sheet for the year 1932, that that shows a book surplus of \$960,000.

A. What year?

Q. 1932.

A. Yes.

Q. That shows a book surplus at that time?

A. Yes, sir.

Q. I will ask you if, in your opinion, that represents a real surplus of the corporation at the end of the year 1932?

Mr. LEMING: If your Honor please, objection is made to that question because all of the detail is set forth in this exhibit. What the real surplus is may be determined by anyone from an examination of this exhibit, which the taxpayer has put in evidence.

The MEMBER: The objection is well taken, is it not, Mr. Mackay? [387]

Mr. MACKAY: I rather think perhaps it is, your Honor. I think the testimony of Mr. de Mille has covered that situation.

The MEMBER: It is sustained.

(Testimony of Cecil B. de Mille.)

By Mr. MACKAY:

Q. Mr. de Mille, I think yesterday you identified the "King of Kings" contract—

Mr. MACKAY: Have you any objection to putting it in, Mr. Leming; I think you examined it yesterday?

Mr. LEMING: Would you mind stating for what purpose? I am not familiar with it and do not know what bearing it has on the situation.

Mr. MACKAY: It has this bearing, if your Honor please; Mr. de Mille testified yesterday that the "King of Kings" was made under the Cinema contract and it was necessary to get additional financing. There was some modification made with respect to the royalties derived under it. I think it is a necessary part of the case.

Mr. LEMING: May I make this inquiry? The witness has testified that the taxpayer here, the Cecil B. de Mille Productions, Inc., did not put up the money to make these pictures. If that is not at variance with his testimony in that regard, I have no objection.

The MEMBER: I understand this explains where the money came from.

Mr. MACKAY: And the necessity for getting it.

The MEMBER: Then, let us have it.

Mr. LEMING: All right.

Mr. MACKAY: There are two contracts.

The MEMBER: Do they both relate to the same matter?

Mr. MACKAY: Yes, sir.

(Testimony of Cecil B. de Mille.)

The MEMBER: Let them be attached and received as Exhibit No. 17. [388]

(The contracts referred to were received in evidence and marked "Petitioners' Exhibit No. 17", and made a part of this record.)

The WITNESS: Is it permissible for the witness to ask a question?

By Mr. MACKAY:

Q. Yes.

A. Mr. Leming stated that I made the statement that this corporation did not put up any of the money for any of these pictures. Was that my statement? If so, it is incorrect.

Q. Have you any explanation to make?

A. Yes. The corporation, as I think I stated yesterday, paid one of the largest salaries in connection with it, the salary of the director.

Mr. LEMING: Whose salary?

The WITNESS: Of the director, and all of the staff who were making the picture.

Mr. LEMING: You were the director?

The WITNESS: Yes.

The MEMBER: That clearly appears from the record. It is all repetition.

Mr. MACKAY: That is all, you may take the witness, Mr. Leming.

Recross Examination.

By Mr. LEMING:

Q. Mr. de Mille, you have the detail of your stocks and bonds and investments in these years from 1923 to 1929, inclusive?

A. Yes, sir.

(Testimony of Cecil B. de Mille.)

Q. Will you let us have it, please? [389]

A. Whether it is segregated or not, I do not know, but it is in the court room.

Mr. LEMING: Will the witness take this and name the stocks and bonds?

Mr. MACKAY: Shall I read it?

Mr. LEMING: I am quite agreeable to saving all of the time we can. You may read it if you like.

The MEMBER: How many pages have you—it is a whole page of figures for one year. Suppose we have it copied and put in.

Mr. MACKAY: We will have a copy made for each of the years.

Mr. LEMING: Have you each of the years?

Mr. MACKAY: We will give it to the Court.



Whereupon

CONSTANCE A. de MILLE,

being called as a witness by and on behalf of the petitioners, and after having been first duly sworn, testified as follows on direct examination:

By Mr. MACKAY:

Q. Mrs. de Mille, I think it has already been shown on the record that you were connected with the Cecil B. de Mille Productions, Inc., and that you are the wife of Cecil B. de Mille. You occupy the position of Vice President of the company, do you not?

A. I do.

Q. And you have since its incorporation?

A. I have.

(Testimony of Cecil B. de Mille.)

(Testimony of Constance A. de Mille.)

Q. Mrs. de Mille, did you have charge of real estate operations of the company?

A. I had a great deal to do with the real estate operations. [390]

Q. In a general way, can you tell the Court just what real estate properties the corporation had during these years 1924 to 1929?

A. The corporation?

Q. Yes.

A. The corporation owned between nine and ten acres in a tract known as Laughlin Park, which had been bought at different times, and when the corporation bought these properties they were subdivided and turned into a building tract. I superintended the surveying and the subdividing and making of the maps. Of those lots, ten lots have been sold in that subdivision, four remaining.

Q. That is a rather exclusive subdivision, is it not?

A. A very high class subdivision.

Q. Did you not also construct some improvements there, the corporation, I mean?

A. The corporation lent money; it advanced money on improvements that were constructed on the property.

Q. Do you know approximately how much money has been made out of the sale of lots in Laughlin Park?

A. About \$125,000.

Q. Now, what other properties did the corporation have, just in a general way; I do not want every specific piece of property.